

CAUSE NO. D-1-GN-20-003980

**MIKE LANG, KYLE BIEDERMAN, WILLIAM  
ZEDLER, STEVE TOTH, and BOB HALL,**  
*Plaintiffs,*

v.

**TEXAS HEALTH AND HUMAN SERVICES,  
PHIL WILSON, Acting Executive Comm'r,  
GREG ABBOTT, as Governor,  
STATE OF TEXAS, and MTX GROUP, INC.**  
*Defendants.*

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IN THE DISTRICT COURT

261ST DISTRICT COURT

TRAVIS COUNTY, TEXAS

**ORIGINAL COMPLAINT TO INVALIDATE CONTRACT AND  
RESTORE SEPARATION OF POWERS**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs Mike Lang, Kyle Biederman, William Zedler, Steve Toth, and Bob Hall, to file this Original Complaint to invalidate the contact tracing contract between MTX Group, Inc. ("MTX") and the State of Texas.

The crux of the remedy sought is two-fold: The first reason to invalidate the contract is that DSHS materially failed to follow competitive bidding rules in awarding the Texas-MTX contract. As discussed herein, the request for proposal for the contract was inadequate, the contract bid process was a sham, and the contract impermissibly exceeds two years.

The second reason to invalidate the contract is that the Texas Constitution requires a separation of powers, and that separation leaves policy-making decisions with the Texas legislature. These decisions are not changed by pandemics.

The Texas Supreme Court recently stated, "The Constitution is not suspended when the government declares a state of disaster." *In re Abbott*, No. 20-0291, 2020 Tex. LEXIS at \*1 (Tex. Apr. 23, 2020). The Governor cannot establish new state policy, issue a \$295M contract to implementing that policy, and ignore or suspend state statutes just by claiming "It's a disaster."

## I. DISCOVERY

1. Plaintiff intends to conduct discovery under Level 3.

## II. RULE 47 STATEMENT OF RELIEF

2. The damages sought herein are within this court's jurisdictional limits. Plaintiffs seek monetary relief of \$100,000 or less and non-monetary relief and all other relief to which they may show themselves entitled.

## III. PARTIES

3. Plaintiffs **Mike Lang**, **Kyle Biederman**, **William Zedler**, and **Steve Toth** reside in the State of Texas and are also members of the Texas House of Representatives. They can be reached at the address of the undersigned.

4. Plaintiff **Bob Hall** is a resident of the State of Texas who also serves as a member of the Texas Senate who can be reached at the address of his counsel of record, the undersigned.

5. Defendant **Texas Department of State Health Services** may be served to its Acting Executive Comm'r, Defendant **Phil Wilson**, at 4900 N. Lamar Boulevard, Austin, Texas 78711.

6. Defendant **Governor Greg Abbott** is an individual sued in his official capacity as the Governor of Texas who may be served at: Office of the Governor, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701; or by mail to: PO Box 12428, Austin TX 78711.

7. Defendant **State of Texas** can be served at the Office of the Attorney General, 300 W. 15th Street, Austin, TX 78701.

8. Defendant **MTX Group, Inc.** ("MTX") is a New York corporation authorized to do business in Texas and may be served through a registered agent, William Sowell or Christina Bailey, at 3001 Dallas Parkway, Suite 201, Frisco, TX 75034, or its CEO, Dastiger Nobel, at 320 Highgate Drive, Slingerlands, NY 12159, or wherever he can be found.

#### IV. JURISDICTION

9. The subject matter of the case is a challenged contract formed between the State of Texas and MTX, giving this Court jurisdiction under Section 2155 of the Texas Bus. & Comm. Code and long-arm jurisdiction under Section 17.042 of the Texas Civil Practices and Remedies Code.

10. Venue is properly founded in Travis County as the suit seeks remedies from the Texas Department of Health and Human Services.

#### V. FACTS

##### **A. The Disaster Act of 1975 & Executive Orders from Governor Abbott**

11. On May 22, 1975 Governor Dolph Briscoe signed H.B. 2032 into law and the Texas Disaster Act of 1975 (“Disaster Act”) was born.<sup>1</sup> Since its 1987 recodification, the Disaster Act has been found in Chapter 418 of the Texas Government Code.<sup>2</sup>

12. The Disaster Act was amended in 2005 following a particularly heavy year for hurricane flooding damage to allow county judges and mayors to order evacuations and “control the movement of persons and the occupancy of premises” in damaged areas.<sup>3</sup>

13. The Disaster Act gives the Texas Governor broad powers in the case of an emergency, purporting to give his pronouncements the force of law at § 418.012, and giving him the ability to suspend laws if, based on his own judgment, they “prevent, hinder, or delay necessary action in coping with a disaster” at § 418.016.

14. The Disaster Act has rarely been employed, and thus its deficiencies have not been obvious until about March 2020<sup>4</sup>, when the COVID-19 virus caused widespread alarm and executives all over Texas began issuing orders created by no legislative process.

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<sup>1</sup> Act of May 22, 1975, 64th R.S., H.B. 2032 (1975).

<sup>2</sup> Act of May 21, 1987, 70th R.S., S.B. 894 (1987); TEX. GOV'T CODE § 418.001 (“This chapter may be cited as the Texas Disaster Act of 1975”).

<sup>3</sup> Act of June 9, 2005, 79th R.S., H.B. 3111 (2005), adding TEX. GOV'T CODE § 418.108(f)-(g).

15. On March 13, Governor Abbott proclaimed a state of disaster, and asserted the power to release state agencies from procurement laws in an unlimited way, stating:

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.<sup>5</sup>

16. Since April 17, 2020 in GA-16, Gov. Abbott has often included verbiage in his executive orders stating: "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business...if strict compliance with the provisions...would in any way prevent, hinder, or delay necessary action in coping with a disaster."<sup>6</sup>

17. Gov. Abbott also adopted an approach that divided tasks and businesses into essential or nonessential, apparently based on whether individuals could operate without the indicated task or business for a short period of time. This division was made without regard to the real danger of viral spread or the long-term economic impact on those with "non-essential" jobs.

18. Gov. Abbott's his first executive order on the subject, GA-08, used vague language to indicate that people "shall avoid social gatherings", "shall avoid eating or drinking at bars..."<sup>7</sup>

19. Over time, these orders have been shown to reflect the preferences of the issuing executives and often have no scientific basis, leading to ludicrous results, e.g. liquor stores and CondemSense can operate freely, but salons and elective surgeries must be closed.

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<sup>4</sup> All dates in this document occur in 2020 unless otherwise specified; all internet URLs last checked July 18, 2020.

<sup>5</sup> The Governor of the State of Tex., Proclamation No. 41-3720, 45 Tex. Reg. 2087 (2020), <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19>

<sup>6</sup> The Governor of the State of Tex., Exec. Order GA-16 (April 17, 2020) (quoting TEX. GOV'T CODE § 418.106(a)).

<sup>7</sup> The Governor of the State of Texas, Exec. Order GA-08 at 1-2 (March 19, 2020), <https://lrl.texas.gov/scanned/govdocs/Greg%20Abbott/2020/GA-08.pdf>.

20. Executive Order GA-08 and each subsequent order or proclamation has cited the Texas Disaster Act of 1975 as support for its enforcement.<sup>8</sup> Since that first executive order, GA-08, Gov. Abbott has issued more than 20 other orders—each one assuming control over commercial and private activities of individuals, requiring that individuals work from home, minimize social gatherings, closing schools, and requiring that elective surgeries cease in selected counties.

21. Nearly all of these executive orders are tantamount to creating state policy, in that they adopt specific approaches to combat the COVID-19 virus which are one of several approaches that could be taken, though Governor Abbott has elevated his own personal choices to be enforced as though they are law. However, because the Governor is not a legislator using a legislative process, his “law-making” has been unbalanced and subject to frequent irrational conclusions, *e.g.*, liquor stores can remain open and essentially unimpeded in their sales, but state-certified hair stylists with 1500 hours of regulated training were outlawed until the Governor realized that he really did not want to put people in jail just for trying to earn a living.<sup>9</sup>

22. The contract tracing policy has never been established as a policy accepted or supported by the Texas Legislature. Multiple legislators have criticized the Contact Tracing Program, including the named plaintiffs; the most likely result of its introduction to the Texas Legislature would be a rejection or a significantly different approach than that which the Governor has taken.

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<sup>8</sup> Legislative Reference Library of Texas, *Executive Orders by Governor Greg Abbott*, <https://lrl.texas.gov/legeLeaders/governors/displayDocs.cfm?govdoctypeID=5&governorID=45>; Legislative Reference Library of Texas, *Proclamations by Governor Greg Abbott*, <https://lrl.texas.gov/legeLeaders/governors/displayProcs.cfm?governorID=45>.

<sup>9</sup> The Governor of the State of Texas, Exec. Order GA-22 (May 7, 2020), <https://lrl.texas.gov/scanned/govdocs/Greg%20Abbott/2020/GA-22.pdf>.

## **B. MTX Contract Background**

23. On April 27, 2020 Governor Abbott held a press conference at which the Governor announced the implementation of a statewide contact tracing program intended to mitigate the spread of COVID-19 by monitoring individuals who have come in contact with COVID-19 patients (“Contract Tracing Program”).<sup>10</sup> Moreover, per a press release from the Governor’s office, the Contact Tracing Program is “a new” program “[d]eveloped and implemented by DSHS [to] identify individuals who have contracted COVID-19 and those who may need to quarantine or be tested due to potential exposure.”<sup>11</sup>

24. Notably, the Governor’s April 27th public announcement of this *new* statewide policy came after “Phase 1 of the tracing program ha[d] been completed.”<sup>12</sup>

25. The Contact Tracing Program has been criticized for its inefficiency, and for its overstepping adoption of a state policy without the State Legislature’s involvement.<sup>13</sup>

26. In furtherance of Governor Abbott’s Open Texas Plan, the Texas Department of State Health Services (“DSHS”) sent out a request for proposal (“RFP”) for bidding on May 5, 2020. The RFP provided funding for Governor Abbott’s Contact Tracing Program, Workforce and Call Center Program, which sought a vendor that would train, deploy, and manage thousands of contact tracers throughout the State of Texas as well as create a call center for up to 5,000 agents.

27. The RFP for contract tracing was not publicly posted as required by the state’s process.

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<sup>10</sup> Press Release, Office of the Tex. Governor, Governor Abbott Announces Phase One to Open Texas (April 27, 2020), <https://gov.texas.gov/news/poststatewide-minimum-standard-health-protocols> (July 1, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (explaining that “new” program would be done by “phased implementation” and that “Phase I of the tracing program has been completed, and Phase II begins today. Phase III begins May 11.”); *see also* Office of the Tex. Governor, *The Governor’s Report to Open Texas* at 16 (April 27, 2020).

<sup>13</sup> <https://open.texas.gov/uploads/files/organization/opentexas/OpenTexas-Report.pdf>.

<sup>13</sup> <https://www.houstonchronicle.com/news/houston-texas/houston/article/texas-contract-tracing-covid-greg-abbott-tx-glitch-15431931.php>.

28. The RFP was far less detailed than the specifications provided by other states during this time, with a very short span of time to respond. No substantive opportunity to ask questions or suggest alternatives that would have been vastly less expensive or more efficient was allowed.

29. The RFP required that a vendor:

Operate and staff a virtual call center from 8 am Central Standard Time to 8pm Central Standard Time 7 days a week. Hire and train management staff to onboard, train, and oversee up to 5000 paid case investigators and contact tracers. ... Hire and train supervisors with virtual call center experience to manage epidemiology, case investigator, and contact tracer staff. ... Hire and train case investigators and contact tracing to contact individuals with a lab confirmed positive COVID-19 diagnosis and their close contacts who were potentially exposed. ... Digitally enabled contact center platform for up to 5000 agents. Provision 1000 work from home agents by May 31, 2020 with a steadily expanding number of agents up to 5000 agents by June 15, 2020.

30. Ten companies entered the process: ACCENTURE, AT&T, DIRECT INTERACTIONS, IBM, LIVEOPS, MAXIMUS, MTX, NTT, QUALTRICS, and VERITAS, but were given only two days to submit their proposals.

31. On May 13, 2020, only eight days after the RFP was sent to a select group of potential vendors and not posted publicly, the State of Texas awarded a \$295,295,796 contract ("Contract") to MTX Group, Inc., a relatively unknown private information technology company based in New York.<sup>14</sup>

32. The award was a shock to many Texans and puzzled many observers; MTX had managed to beat out established tech giants like Accenture, IBM, Maximus Health, NTTA Data, and AT&T, with little-to-no prior history of work for the State.<sup>15</sup>

<sup>14</sup> The Contract is attached as Exhibit A and incorporated by reference.

<sup>15</sup> Brian New, *Relatively Unknown Frisco Tech Company Gets Nearly \$300M From Texas For Coronavirus Contact Tracing*, CBS Ch. 11, (July 13, 2020, 8:08 PM), <https://dfw.cbslocal.com/2020/07/13/relatively-unknown-frisco-tech-company-300m-texas-coronavirus-contact-tracing/>; Robert T Garrett and Allie Morris, *Small Frisco company wins huge Texas COVID-19 contract. Lawmakers question if it's up to the \$295M job*, Dallas Morning News, (May 20, 2020, 8:42 PM), <https://www.dallasnews.com/news/public-health/2020/05/20/small-frisco-company-wins-huge-texas-covid-19-contract-lawmakers-question-if-its-up-to-the-295m-job/>.



33. The hastily-awarded multi-million-dollar Contract between the State and MTX was executed before any member of the Texas Legislature was provided an opportunity to review it to determine if it was a responsible allocation of government funding.

34. The Contract includes a “Legal Authority” section wherein it claims to be authorized by Governor Abbott’s proclamation along with the “Texas Health and Safety Code Chapters 12, 81, and 1002, and Section 418.017 of the Texas Government Code that authorize the use of all available resources of state government and political subdivisions that are reasonably necessary to cope with this disaster.”<sup>16</sup>

35. Though the Texas Legislature has provided no authority for this sweeping new approach to COVID-19 and contact tracing, the Contract includes verbiage admitting its governance as subject to the appropriation process and authority of the Texas Legislature, stating at Section 3.1:

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature.<sup>17</sup>

36. Based on past experience, Plaintiffs assume that Defendants will assert that Section 81.011 of the Texas Health and Safety Code allows contact tracing. The statute states:

In times of emergency or epidemic declared by the commissioner, the department is authorized to request information pertaining to names, dates of birth, and most recent addresses of individuals from the driver's license records of the Department of Public Safety for the purpose of notification to individuals of the need to receive certain immunizations or diagnostic, evaluation, or treatment services for suspected communicable diseases.

*Id.* The Contract (Exhibit A) far exceeds the authorization to request driver’s license records from DPS, as the process includes tracking every person in the state and cross-referencing vague symptoms with assumptions about the cause of any ailment and then enforcing quarantines.

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<sup>16</sup> Exhibit A at 1.

<sup>17</sup> Exhibit A at 31.



37. For example and as a reminder, the CDC's current definition of a "probable case" includes anyone with a cough, shortness of breath, or difficulty breathing, irrespective of any actual test or test results, unless medical personnel can determine that no other no alternative and more likely diagnosis is present - in other words, unless medical personnel can see that some other cause for a cough exists, the case is reported as a COVID-19 case.<sup>18</sup> Thus, if multiple causes for a symptom can exist, COVID-19 wins all ties and can be reported as a COVID case irrespective of any evidence that COVID is even present in a patient.

38. Similarly, Defendants may argue that Section 12.0121 of the Texas Health and Safety Code removes any obligation to use competitive bidding in an emergency, but even if that statute is constitutional and effective, it is only effective "if the executive commissioner by order determines that an emergency exists that necessitates the use of different procedures."<sup>19</sup> Thus, even if this government-empowering law exists, the executive commissioner must have issued an order, and a real emergency necessitating the different procedures must exist.

39. Chapter 1002 of the Texas Health and Safety Code does not help Defendants, since that chapter was repealed in 2015.<sup>20</sup> This citation to authority of a law that was repealed more than five years ago indicates, at the least, a lack of attention to detail that should not exist in a document that is intended to result in hundreds of millions of tax dollars expended to create a new state program adopted without the constitutionally required oversight of the Texas Legislature. This error, made on the first page of the Contract, demonstrates why claims of "emergency" cannot be the new normal for the State of Texas for months on end.

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<sup>18</sup> See Centers for Disease Control and Prevention's Coronavirus Disease 2019 (COVID-19) 2020 Interim Case Definition, Approved April 5, 2020,

<https://www.cdc.gov/nndss/conditions/coronavirus-disease-2019-covid-19/case-definition/2020>

<sup>19</sup> TEX. HEALTH & SAFETY CODE § 12.0121(d).

<sup>20</sup> Exhibit A at 1 (stating the "contract is authorized by and in compliance with the provisions pursuant to Texas Health and Safety Code, Chapter[] . . . 1002 . . .").

40. The Declaration of Nick Richards, an employee of one of the bidders for what became the Contract and witness to the bidding process, is incorporated by reference and attached as Exhibit B. Mr. Richards declarations reveals the following:

- a. The request for proposal was far less detailed than other specifications provided by other states during this time, with a very short span of time to respond.
- b. No substantive opportunity to ask questions or suggest alternatives that would have been vastly less expensive or more efficient was allowed.
- c. The proposal request did not specify whether the call center should be certified or competent to handle HIPAA data, or consider workflows of call center employees.
- d. Vendors were unable to ask how many case workers per calling agent were expected, how they were expected to communicate, or how such communications were to be recorded and retained.

41. Based on the above, the bid proposal did not meaningfully include contact information for vendors to contact to inquire about all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract.

42. The Contract's duration exceeds two years. Specifically, the Contract commenced on May 13, 2020, the date the Executive Commissioner of DSHS and the CEO of MTX signed and executed the Contract and it "terminates on August 13, 2022."<sup>21</sup>

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<sup>21</sup> Exhibit A at 1, III.

## VI. STANDING OF PLAINTIFFS

### A. State Representatives and Senators have standing under Separation of Powers.

43. The Constitution vests law-making power in the Legislature. Tex. Const., art. IV, § 1.

44. The Constitution vests enforcement of laws in the Executive branch of the state government, which is led by the Governor. Tex. Const., art. IV, § 10.

45. The Contract will impact all individuals living in Texas, including all state Representatives and Senators so they will be directly subject to the impact of the Contract.

46. The Texas Supreme Court has recently addressed the intersection of standing and separation of powers in evaluating the standing of judges challenging one of Gov. Abbott's executive orders. The opinion noted that the Texas standing requirements parallel the federal test for Article III standing, requiring a plaintiff to allege a personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. *In re Abbott*, No. 20-0291, 63 Tex. Sup. Ct. J. 909, 2020 Tex. LEXIS 351, at \*7 (Apr. 23, 2020).

47. In meeting the federal requirement, a plaintiff must show: 1) an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent (not conjectural or hypothetical); 2) a causal connection between the injury and the conduct complained of that is fairly traceable to the defendant's challenged action; and 3) demonstrate that the alleged injury will be redressed by a favorable decision. *Id.*, at 8.

48. *In re Abbott*, the Texas Supreme Court rejected petitions by district judges for lack of standing, referring to *Raines v. Byrd*, 521 U.S. 811 (1997) and its standing evaluation in a separation-of-power case, as well as *Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001), where a Houston city council member complained of a mayor usurping the city council's power.

49. *Raines* concerned a challenge to the line item veto passed in 1997 filed by federal legislators who argued that they suffered a diminution of legislative power by the new act as it allowed the President to cancel congressional expenditures. *Raines v. Byrd*, 521 U.S. at 315-16.

50. *Raines* discussed that legislator standing had been recognized when a number of legislators had sued and demonstrated that their votes should have been sufficient to defeat a proposal in *Coleman v. Miller*, 307 U.S. 433, 83 L. Ed. 1385, 59 S. Ct. 972 (1939).

51. In *Raines*, the U.S. Supreme Court rejected the suing legislators' standing because they were effectively just complaining about a change in power that was voted on by Congress and they had lost. In the discussion, the U.S. Supreme Court analyzed *Coleman* and summarized its teaching as standing for the proposition that legislators can have standing by allegations that their votes would have been sufficient to cause a different specific outcome on a specific legislative act had their votes not been nullified by the defendant's actions. *Id.*, at 823.

52. Texas State Representatives Mike Lang, Kyle Biederman, William Zedler, and Steve Toth, as well as Senator Bob Hall (collectively, "Legislator Plaintiffs") contend that they have standing as individuals who are impacted and subject to the Contact Tracing Program, differentiating this case from *Raines* (where suit was brought by those who lost a vote) and *Brown v. Todd* (where the challenging council member had no standing because he was not impacted by the mayor's new program). The Texas Legislature has never voted on the subject of the Contact Tracing Program, or even discussed it.

53. The Legislator Plaintiffs urge primarily that the Disaster Act can be a valid law that is unconstitutional in its application - as the Governor has no excuse to create a policy not previously existing, violating the Texas Constitution's required Separation of Powers, when he can call a special session of the Legislature in this emergency, now going on four months.

54. Moreover, the Disaster Act's asserted authority to give the Governor the power to make laws is contrary to the Texas Constitution, which requires legislative bills to create laws and not executive orders. Tex. Const., art. III, § 30 ("No law shall be passed, except by bill"). This is because "[t]he Constitution of this state, by Art. 3, Sec. 30, requires that no law shall be passed except by bill." *Feagin v. State*, 310 S.W.2d 99, 100 (Tex. Crim. App. 1957).

55. In the present case, the Governor has opted to create a new 5,000-person business for an unproven vendor to enact a contact tracing policy that the Texas Legislature has not approved.

56. Though the Governor has been aware of this emergency for more than four months and the Texas Constitution specifically allows the Governor to call a special session of the Legislature to address "disease threat" (Tex. Const., art. 4 section 8), he has shown no intention of doing so, but appears determined to sit in the Governor's mansion and issue laws *ex cathedra* in a clumsy and inconsiderate manner that requires ongoing revision.

57. The Legislator Plaintiffs do not contend that the Governor *is required* to call a special session in the face of disease threat, but that he cannot use a perpetual state of emergency to create state policy on his own. Using a serious but manageable disease threat which some refer to as "the new normal" and authorizing multiple-year contracts entrenching a new bureaucracy and effective government program is not an appropriate use of the Governor's power. Governor Abbott's remedy is a special session.

58. The Legislator Plaintiffs also simply allege that the State of Texas will be in no danger of overwhelming the judicial system if it recognizes standing of members of the State Legislature to challenge illegal legislation and spending based on a specific and novel legislative policy that the Legislature has never discussed, but is being implemented by the executive branch *fait accompli*.

59. This is not a matter of a losing side of the Legislature suing to win in the courts that which it lost in a legislative vote, but a number of legislators seeking to stop the establishment of a new state policy never approved by a bill or even discussed by the Legislature, and to void the Contract implementing that policy. The Court need not fear a flood of inter-branch litigation based on the conditions herein described.

60. The judicial branch ought not allow the executive branch to use standing to dodge its duties before this court in the face of such usurpation. After all, the executive branch can set up courts as well. Without action, what is to keep Governor Abbott from setting up tribunals in the Age of Endless Emergency that just “help” take the load from a busy court system?

**B. Plaintiffs have standing as taxpayers and can seek to prevent illegal expenditures.**

61. “Taxpayers in Texas have standing to enjoin the illegal expenditure of public funds, and need not demonstrate a particularized injury.” *Williams v. Huff*, 52 S.W.3d 171, 179 (Tex. 2001); *see also Bland Indep. Sch. Dist. v. Blue*, 24 S.W.3d 547, 555-56 (Tex. 2000) (“[I]n Texas law there is a long-established exception to this general rule: a taxpayer has standing to sue in equity to enjoin the illegal expenditure of public funds, even without showing a distinct injury.”); *Andrade v. Venable*, 372 S.W.3d 134, 137 (Tex. 2012) (per curiam).

62. To establish taxpayer standing and seek an injunction in a court of equity, Plaintiffs need only show that: (1) they are taxpayers; (2) there exists an agreement under which public funds are to be expended in the future; and (3) the agreement violates the Constitution or is otherwise illegal. *Tex. State Emples. Union/CWA Local 6184 v. Tex. Workforce Comm'n*, 16 S.W.3d 61, 68 (Tex. App.—Austin 2000) (citing *Osborne v. Keith*, 177 S.W.2d 198, 200 (Tex. 1944)).

63. Based on the information available at this time, funds used for the Contract came from Texas taxpayers, and future funds to be expended will also come from taxpayers. The amount of taxpayer funds to be expended on the Contract is significant. *Andrade* 372 S.W.3d at 433.

64. Plaintiffs challenge the Contract as failing to comply with the Texas Competitive Bidding Statute and exceeding the Governor's powers under the Texas Constitution. Plaintiffs assert that the Contract is thus void.

## VII. CLAIMS

### A. Claim 1 – Declaration - The Contract to MTX is void for lack of authority.

65. Plaintiffs allege that the \$295M contract with MTX is void for lack of DSHS' authority to expend essentially unlimited funds toward a goal unidentified by the Legislature, and its award made without legal authority and subject to an ultra virus claim to declaratory judgment.

66. The Texas Constitution requires state expenditures to be toward specific appropriations and also limits such appropriations to time periods less than two years. Tex. Const., art. VIII, § 6.

67. Assertions of a power to issue million-dollar contracts instituting new state programs cannot be based on vague phrases in appropriation bills, as courts take seriously their charge with regard to these matters. For example, when a corporation attempted to sue the state for fees collected under a vague legislative resolution, the Supreme Court of Texas rejected an assertion that an appropriation of funds had been made by the Legislature's vague language, concluding:

“[W]e think that this attempted appropriation falls short of meeting the constitutional requirement that it be *specific*. It is absolutely conditional or contingent as to whether it will ever become effective, depending on when and if a final judgment shall be awarded. It is indefinite as to amount, or even as to a maximum amount, leaving that matter, not to the Legislature, but to another branch of the Government, the courts to determine. We do not believe that such an appropriation of money out of the State Treasury meets the constitutional requirements that it shall be *specific*.”

*Nat'l Biscuit Co. v. State*, 134 Tex. 293, 305, 135 S.W.2d 687, 693-94 (1940).



68. *Nat'l Biscuit* also included an analysis of the two-year limitation of an appropriation, and found the alleged appropriation language in a legislative resolution to be invalid because the language was not limited to claims within a two-year period. *Id.*

An appropriation can be made for all funds coming from certain sources and deposited in a special fund for a designated purpose. In such instances, it is not necessary for the appropriating Act to name a certain sum or even a certain maximum sum. In spite of the above rules of law, we think that this attempted appropriation falls short of meeting the constitutional requirement that it be specific. It is absolutely conditional or contingent as to whether it will ever become effective, depending on when and if a final judgment shall be awarded. It is indefinite as to amount, or even as to a maximum amount, leaving that matter, not to the Legislature, but to another branch of the Government, the courts to determine. We do not believe that such an appropriation of money out of the State Treasury meets the constitutional requirements that it shall be specific."

*McCombs v. Dall. Cty.*, 136 S.W.2d 975, 980 (Tex. Civ. App.—Dallas 1940) (cleaned).

69. Plaintiffs assume that the Defendants will refer to the Disaster Act's gift of legislative power in Section 418.012, which states that a governor's executive orders and proclamations have the force and effect of law. But the Texas Legislature may not lend its authority to the executive branch so broadly. Even if the Texas Legislature desires to pass authority to the Texas Governor, the legislature may not authorize by statute that which the Constitution forbids. The Texas Criminal Court of Appeals explained the limits of the Texas Legislature more than a century ago while invalidating a municipal ordinance disallowing pool halls that based on an invalid state law which attempted to provide local control contrary to the Constitution:

Without reviewing the history of the oppressions which grew out of the suspension of laws by reason of such delegation of legislative authority and the declaration of martial law scarcely more than a quarter of a century in the past, it is sufficient to state the fact of such occurrences, and that this change in the organic law swiftly followed, prohibiting such action by the Legislature. The Legislature is but one of the three co-ordinate branches of this government, and has no authority to set aside and override the express limitations upon its power.

*Ex parte Francis*, 165 S.W. 147, 175 (Tex. Crim. App. 1914).

**B. Claim 2 – Declaration - The Contract with MTX is void for lack of competitive bidding.**

70. As described above, the DSHS awarded a \$295M contract to MTX to implement a Contact Tracing Policy, conducting the bid process in unusual circumstances under a contract incorporating a major policy adoption in this state.

71. Texas law requires that “a purchase of or contract for goods or services shall, whenever possible, be accomplished through competitive bidding.” TEX. GOV’T CODE § 2155.063.

72. Competitive bidding requires that vendors be given a bid package that includes a number of detailed requirements, including the name, business mailing address, and business telephone number of the state agency employee a person may contact to inquire about all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract. *Id.* at § 2155.083(g)(6). Additionally, Sec. 2155.083(h) requires the state to allow a minimum of 21 days after notice of the procurement, or 14 days after an agency first posts the entire bid package, before awarding a contract. *Id.* at § 2155.083(h).

73. Competitive bidding requirements for the minimum posting times may be shortened when they are formed to meet an emergency requiring the state agency to make a procurement more quickly in order to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. *Id.* at § 2155.083(i). Section 2155.083(j) also states that a “procurement award made by a state agency that violates the applicable minimum time for posting required by Subsections (h) and (i) is void.”

74. The Texas Competitive Bidding Statute does not generally allow emergency conditions to excuse any of its requirements other than the minimum posting times.

75. Contracts formed without complying with competitive bidding laws are void. *Darnell v. McLennan County*, 671 S.W.2d 686 (Tex. App. Waco 1984) (writ refused, n.r.e., Nov. 21, 1984).

76. Further, mechanisms for letting contracts which weaken or avoid the competitive nature of the bidding process required by the statutes are improper. *Texas Highway Commission v. Texas Ass'n of Steel Importers, Inc.*, 372 S.W.2d 525 (Tex. 1963).

77. No particularized injury need be demonstrated by a Texas taxpayer to maintain a suit for illegal expenditure of funds. *Andrade v. Venable*, 372 S.W.3d 134, 137 (Tex. 2012) (per curiam).

78. Section 2.6.1 of the HHSC 2015 Procurement Manual describes what proper competitive bidding process entails, taking direction from the Supreme Court of Texas in its description:

“Competitive bidding” requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items covered by the contract; upon the same terms and conditions involved in all the items and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar, specifications. Its purpose is to stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests of the taxpayers and property owners.”

*Tex. Highway Com'n v. Tex. Ass'n of Steel Importers*, 372 S.W.2d 525 (Tex. 1963).<sup>22</sup>

79. Here, the Contract was not posted publicly, and only known to vendors a few days before DSHS accepted MTX's bid. Vendors were not given the opportunity to meaningfully inquire about necessary information related to making a bid for the procurement contract.<sup>23</sup> Thus, Plaintiffs assert that the Contract is void for violating the state's posting requirements.

80. Plaintiffs are aware that the Governor will claim that an emergency exists and he is therefore authorized to simply suspend these laws using the Disaster Act of 1975. Additionally, the DSHS will claim that it has emergency procurement procedures which the defendants will claim will support the shortened period. The Governor cannot use a law designed to ensure smooth operation during emergencies as cover to adopt a contract that adopts the Trace Contract Policy as though it is already state policy and funds already allocated.

<sup>22</sup> Tex. Dep't of Health & Human Serv. Comm., *Procurement Manual v. 1.1*, at 65 (April 2015), <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/handbooks/procurement-manual.pdf>.

<sup>23</sup> See Exhibit B (Declaration of Nick Richards).

81. Plaintiffs note that the requirements of the competitive bidding rules are irrelevant to whether a funding source, such as the federal government, promises to pay the contract.

**C. Claim 3 – The MTX Contract’s implementation should be enjoined as illegal.**

82. As stated above, Plaintiffs have the right to maintain an action in a court of equity to enjoin public officials from expending public funds under a contract that is void or illegal. *Osborne v. Keith*, 177 S.W.2d 198, 200 (Tex. 1944).

83. Contracts must be authorized by specific allocations of power. For example, when an Adjutant General for an Armory signed a five-year lease, payment was denied because the statute gave no authority to the officer to enter into the lease. The Texas Supreme Court stated:

All public offices and officers are creatures of law. The powers and duties of public officers are defined and limited by law. By being defined and limited by law, we mean the act of a public officer must be expressly authorized by law, or implied therefrom. 22 R.C.L. p. 555, § 114. It follows from the above that *public officers may make only such contracts for the government they represent as they are authorized by law to make.*

*Fort Worth Cavalry Club, Inc. v. Shepard*, 83 S.W.2d 660, 663-65 (Tex. 1935) (emph. added).

84. A Texas governor may not disguise an illegal or unauthorized expenditure of funds by merely claiming authority under the Disaster Act of 1975 or claiming an emergency exists.

If the main purpose of the city is to engage in the unlawful enterprise, it can not give the illegal act life by naming it for a purpose that is lawful, and disguising the true purpose under the semblance of legal authority. Declaring the exercise of power in the given instance to be for a purpose within its charter powers does not add any validity to the illegal act. . . . If this be the principal purpose and object in erecting the dam and issuing the bonds, the fact that there is incidentally connected with such enterprise a purpose that is lawful will not give any life and validity to the illegal purpose; but the whole transaction is tainted with the vice of the forbidden object, and is in its entirety illegal. The courts will not endeavor to separate the legal and illegal parts of the transaction, for this would be impracticable, and a court of equity will not undertake it.

*City of Austin v. Nalle*, 22 S.W. 668, 668 (Tex. 1893).

85. Plaintiffs seek the Court’s injunctive relief to prevent the MTX Contract’s execution.

**D. Claim 3 – Declaration - The Contact Tracing Policy implemented by the Contract is an impermissible violation of this state’s Separation of Power.**

86. Article II of the Texas Constitution states that Texas has three distinct departments, including the legislative, executive, and judicial, and none may exercise powers attached to the other. Article II states that the Legislature passes laws. Texas Const., art. II, § 1.

87. Article IV, Section 8 gives the governor authority to call a special session of the Legislature “in case of the prevalence of disease threat.”

88. Section 28 of the Bill of Rights restricts the power to suspend laws to the Legislature alone. Tex. Const., art. I, § 28.

89. Article III, Section 44 provides that “The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not . . . employ anyone in the name of the State, unless authorized by pre-existing law.” Texas Const., art. III, § 44.

90. Article III, Section 49a(b) describes emergency spending, and instructs that:

Except in the case of emergency and imperative public necessity and with a four-fifths vote of the total membership of each House, no appropriation in excess of the cash and anticipated revenue of the funds from which such appropriation is to be made shall be valid. No bill containing an appropriation shall be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds. When the Comptroller finds an appropriation bill exceeds the estimated revenue he shall endorse such finding thereon and return to the House in which same originated. Such information shall be immediately made known to both the House of Representatives and the Senate and the necessary steps shall be taken to bring such appropriation to within the revenue, either by providing additional revenue or reducing the appropriation.

Tex. Const., art. III, § 49a(b).

91. In spite of the Constitution’s prohibition regarding employment without authorization, the Contract employs thousands of public contractors without a law’s authorization. A defender

of the Contract might argue that these contractors do not work for the state, but for the winning vendor only; in such case, the state law still has to be authorized by pre-existing law.

92. In the current case, an agency is spending funds on a program where *no* appropriation was ever made, so *any* expenditure on contact tracing is one exceeding its appropriation.

93. Texas Attorneys General have often opined in this area. Two examples should suffice:

a) “The Texas Board of Architectural Examiners lacked statutory authority to enter into a contract with a private, nonprofit organization to select scholarship recipients and disburse scholarship funds. In order to ensure that scholarship awards satisfy the dictates of article III, sections 51 and 52 of the Texas Constitution, the awards must serve the public purpose identified by the legislature. The Board’s draft rule is sufficient to ensure that the public purpose identified by the legislature will be achieved.”

Tex. Att’y Gen. Op. No. JC-0244 at 7 (2000).<sup>24</sup>

b) “The legislature may not appropriate funds to a state agency to transfer to a private endowment unless the legislature (i) determines that the expenditure serves a public purpose and (ii) requires the agency to place sufficient contractual controls on the transaction to ensure that the public purpose is carried out. The authority of the state agency to transfer the funds and enter into a contract providing the requisite controls must be supported by substantive law. Southwest Texas State University lacks statutory authority to transfer appropriated state funds to the National Geographic Society for a Texas Fund for Geography Education to benefit elementary and secondary geography education in the state or to enter into a contract with the National Geographic Society regarding such a transaction.”

Tex. Att’y Gen. Op. No. JC-0146 at 6 (1999).<sup>25</sup>

94. Growing uneasy with ongoing expenditures and attempts to spend tax dollars, the electorate found itself insecure and took steps to rein in spending and provide oversight by adding Article 8, Sec. 6 to the Texas Constitution in 1999 the provision, “No money shall be

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<sup>24</sup> A copy of this opinion is available online at: <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2000/jc0244.pdf>.

<sup>25</sup> A copy of this opinion is available online at: <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/1999/jc0146.pdf>.

drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years.” Tex. Const., art. VIII, § 5.

95. Though the crisis of the virus has been with the state for more than four months, Governor Abbott has failed to call a special session. Instead, pursuant to a statute that purports to delegate power that cannot be delegated, chief executives of Texas governments (state, county, and municipal) have created new laws, defined crimes, and suspended existing laws. Plaintiffs contend that the Governor’s actions are *ultra vires*, and not within his constitutional authority.

96. While the Legislature may not delegate legislative power, it may delegate legislative authority only by providing strict guidelines so that the power’s recipient is implementing a policy set by the Legislature and not making its own policy decisions.

97. In this case, the Governor is without guidelines, resulting in a three-hundred-million-dollar contract issued without direction from the Legislature based on an Disaster Act which purports to give the Governor unlimited power and constitutionally insufficient boundaries under case law. For example, in *Nat’l Biscuit Co. v. State*, the Court of Appeals observed that the framers of the Texas Constitution required that appropriations made by the Legislature were specific, and made by law, stating: A mere attempted appropriation which names no sum, prescribes no limit as to amount, by resolution and not by law, manifestly does not meet the requirement.” *Nat’l Biscuit Co. v. State*, 129 S.W.2d 494, 497 (Tex. Civ. App.—Austin 1939).

98. Courts accept that an appropriation can be made for all funds coming from defined sources and deposited in a special fund for a designated purpose, but found a conditional expenditure based on an indefinite final judgment to be dispensed by the courts to determine was insufficiently defined, stating “We do not believe that such an appropriation of money out of the



State Treasury meets the constitutional requirements that it shall be specific." *McCombs v. Dall. Cty.*, 136 S.W.2d 975, 980 (Tex. Civ. App.—Dallas 1940).

99. Plaintiffs assert that the sections 418.012 (giving power to issue laws), and 418.016 (power to suspend laws) are unconstitutional, either facially or as-applied, in that the Governor's suspension of competitive bidding laws was used to cover an inadequate bid process resulting in the MTX Contract, and herein seek the Court's declaration to find those suspensions of law void.

**E. Claim 4 – Application for Temporary Injunction: This Court should enjoin further payment or implementation of the Contract until this case is heard on its merits.**

100. When seeking temporary injunctions to preserve the status quo, litigants must show: (1) a cause of action against a defendant; (2) probable right to the relief sought; and (3) probable, imminent, and irreparable injury. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

101. Plaintiffs have alleged causes of action concerning a Contract formed by the state for which no appropriation has been made by the Texas Legislature, which extends more than two years, and which was issued without meeting bid requirements.

102. While some of these allegations may require the trier of fact to examine the merits, other allegations are clear - the Contract's duration unquestionably exceeds the two-year limit.

103. The Contract Tracing policy violates the Separation of Powers guaranteed by the Texas Constitution and harms Plaintiffs by violating their right to stop illegal expenditure of funds and intrusive new government policies which offend Texan sensibilities regarding the right to avoid observation by unaccountable contractors working for a politically connected company.

104. Plaintiffs assert the Contract must be enjoined until a trial on the merits of their claims.

## VIII. WAIVER OF MOOTNESS / IMMUNITY

105. Violations of competitive bidding contracts have been recognized by Texas appellate courts as actions for which the state has waived immunity, and also as being capable of repetition yet evading review. *Labrado v. Cty. of El Paso*, 132 S.W.3d 581 (Tex. App.—El Paso 2004).

106. As this suit names Governor Abbott and Acting Executive Comm'r, Director Phil Wilson as officials acting under the ultra vires exception, immunity does not preclude injunctive relief in this official-capacity suit against them, as they are violating state statutes and the Texas Constitution. This suit falls within the ultra vires exception to governmental immunity because it complains of government officers' actions taken without legal authority. *Satterfield & Pontikes Constr., Inc. v. Tex. S. Univ.*, 472 S.W.3d 426, 429 (Tex. App.—Houston [1st Dist.] 2015). Plaintiffs intend to prove just that in this suit.

107. The Third Court of Appeals has identified four important requirements for an *ultra vires* exception to immunity:

First, the suit must formally be pleaded against a governmental official, in his or her official capacity, not the government principal, a procedure conforming to an underlying concept that ultra vires suits do not seek to judicially control the government, but merely to reassert the control of the government. Second, the "suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act." The third limitation relates to the nature and effect of the remedy sought. The remedy must be prospective in nature—i.e., compelling legal compliance going forward, as opposed to awarding retrospective relief to remedy past violations. The fourth limitation, closely related to the third, is that an ultra vires claim otherwise within the trial court's jurisdiction may independently implicate immunity if it would have the effect of establishing a right to relief against the government for which the Legislature has not waived immunity.

*City of Austin v. Util. Assocs.*, 517 S.W.3d 300, 308-09 (Tex. App.—Austin 2017). This case meets each elements; the goal is reassert control of the prospective governance of the state.

108. Additionally, the Texas Supreme Court has recently clarified that declaratory judgment claims remain available to invalidate unconstitutional statutes. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 552-53 (Tex. 2019). As pleaded herein, Plaintiffs allege that the Disaster Act is invalid to the extent it seeks to allow the Governor of Texas to suspend or create laws in a manner unfettered in any significant manner, either facially or at the least, to the extent that the Act allows Gov. Abbott to adopt and award \$295M contracts creating new state policies.

### **IX. REQUEST FOR RELIEF**

Plaintiffs ask the Court to: i) declare the executory Contract between MTX and the State of Texas invalid for lack of statutory authorization; ii) issue a temporary injunction enjoining MTX and Texas from further performing any future obligations under the Contract; iii) invalidate the Disaster Act for its unconstitutional application to grant of the MTX Contract, at the least; and iv) grant any and all further relief or remedies to which they are entitled.

By: /s/Warren V. Norred  
Warren Norred, Texas Bar No. 24045094  
Norred Law, PLLC, 515 E. Border, Arlington, TX 76001  
wnorred@norredlaw.com  
Tel. (817) 704-3984, Fax. (817) 549-0161  
Attorney for Plaintiffs

Exhibits attached:

- A: Contract
- B: Declaration of Nick Richards

**SIGNATURE DOCUMENT FOR  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. HHS000791800001  
UNDER THE  
CONTACT TRACING PROGRAM, WORKFORCE AND CALL CENTER PROGRAM**

**I. PURPOSE**

The **DEPARTMENT OF STATE HEALTH SERVICES** ("System Agency" or "DSHS"), a pass-through entity, and **MTX GROUP, INC.** ("Contractor") (each a "Party" and collectively the "Parties") enter into the following contract to provide funding for Contact Tracing Program, Workforce and Call Center (the "Contract") as described in **Attachment A, Statement of Work**.

**II. LEGAL AUTHORITY**

This Contract is authorized by and in compliance with the provisions pursuant to Texas Health and Safety Code, Chapters 12, 81, and 1002, and Section 412.017 of the Texas Government Code that authorize the use of all available resource of state government and of political subdivisions that are reasonably necessary to cope with this disaster. By Proclamation by the Governor of the State of Texas, the Contact Tracing Program, Workforce and Call Center Program is in support of Governor Abbott's Open Texas Plan.

**III. DURATION**

This Contract is effective on the signature date of the latter of the Parties to sign this agreement and terminates on August 31, 2022, unless renewed, extended, or terminated pursuant to the terms and conditions of the Contract. The System Agency, at its own discretion, may extend this Contract subject to terms and conditions mutually agreeable to both Parties. DSHS may renew this Contract for two (2) additional one-year terms, at the sole discretion of DSHS.

**IV. BUDGET**

The total amount of this Contract will not exceed **\$295,295,796**. All expenditures under the Contract will be in accordance with **ATTACHMENT B, BUDGET AND COST PROPOSAL**. Portions of the attached Budget reflect optional services that will be available to DSHS for implementation during the term of the contract. While those optional services are within the scope of this contract Contractor is not authorized to perform them or incur costs for them unless and until DSHS issues a written Work Order authorizing the services to be performed. Such issuance is solely within the discretion of DSHS.

**V. CONTRACT REPRESENTATIVES**

The following will act as the Representative authorized to administer activities under this Contract on behalf of their respective Party.

**System Agency**

Lauren Miller, CTCM, Branch Manager  
1100 West 49<sup>th</sup> Street, MC 1990  
Austin, Texas 78756

(512) 776-3574  
[Lauren.miller@dshs.texas.gov](mailto:Lauren.miller@dshs.texas.gov)

**Contractor**

Chad Leeper  
1450 Western Avenue, Suite 304  
Albany, NY 12203  
Chad Leeper, SVP of Sales  
[chad.leeper@mtxb2b.com](mailto:chad.leeper@mtxb2b.com)

**VI. LEGAL NOTICES**

Any legal notice required under this Contract shall be deemed delivered when deposited by the System Agency either in the United States mail, postage paid, certified return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address below:

**System Agency**

Department of State Health Services  
1100 West 49th Street, MC 1911  
Austin, Texas 78756  
Attention: General Counsel

With a copy to:

**HHSC**

4900 North Lamar Blvd.  
Austin, TX 78751  
Attention: Karen Ray, Chief Counsel

**Contractor**

**MTX GROUP, INC.**  
1450 Western Avenue, Suite 304  
Albany, NY 12203  
Attention: [das@mtxb2b.com](mailto:das@mtxb2b.com)

Notice given by Contractor will be deemed effective when received by the System Agency. Either Party may change its address for notice by written notice to the other Party.

**VII, Modifications to the Uniform Terms and Conditions**

Sections 11 of Attachment C, Uniform Terms and Conditions, is modified to read as follows:

**7.1 WORK ORDERS**

If DSHS decides to authorize optional services as specified above in Article IV of this Signature Document, all Work will be authorized by and performed in accordance with properly executed Work Orders.

**SIGNATURE PAGE FOR  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. HHS000791800001**

**DSHS**

DocuSigned by:

*Phil Wilson*

356B1E5264794F...

Name: Phil Wilson

Title: Executive Commissioner

Date of execution: May 13, 2020

**CONTRACTOR**

DocuSigned by:

*Das Nobel*

BDC67FA4CE424B1...

Name: Das Nobel

Title: Chief Executive Officer

Date of execution: May 13, 2020

**THE FOLLOWING ATTACHMENTS TO THE CONTRACT ARE HEREBY INCORPORATED BY  
REFERENCE:**

**ATTACHMENT A - STATEMENT OF WORK**

**ATTACHMENT B - BUDGET**

**ATTACHMENT C - HHSC UNIFORM TERMS AND CONDITIONS**

**ATTACHMENT D - ADDITIONAL PROVISIONS**

**ATTACHMENT E--GENERAL AFFIRMATIONS**

**ATTACHMENT F - DATA USE AGREEMENT**

**ATTACHMENT G - FEDERAL ASSURANCES – NON-CONSTRUCTION**

**ATTACHMENT H - FEDERAL LOBBYING CERTIFICATE**

**ATTACHMENT I – MTX GROUP, INC SOLICITATION RESPONSE**

Attachment A

Statement of Work

Unofficial copy Travis Co. District Clerk Velda L. Price



HHS0007918

## **Statement of Work for Contact Tracing Program, Workforce and Call Center Technology**

### **Summary**

On April 27, 2020, the Governor announced that the State of Texas will implement a statewide contact tracing program to help identify and mitigate the spread of COVID-19. In support of the Open Texas Plan, the Texas Department of State Health Services (DSHS) is seeking a vendor to propose additional elements of the multi-pronged approach to support these efforts by training, deploying, and managing thousands of contact tracers who will call people who have been in close contact with COVID-19 patients. DSHS is part of the Health and Human Services System (HHS System), which also includes the Health and Human Services Commission (HHSC). This work will be combined with the state's initiatives to increase testing, effectively manage outbreaks, and provide support to people in quarantine/isolation to contain the spread of COVID-19.

### **Background**

On April 27, 2020, DSHS deployed the Texas Health Trace application through Texas.gov. This application, which is built on a Salesforce platform, provides the public with the ability to conduct a self-assessment of their symptoms and other factors to determine a recommended course of action. Members of the public may register in the application and identify persons they have been in close contact with. On May 2, the functionality of the application was expanded to include case management. Additional enhancements will be made.

On April 27, 2020, DSHS also deployed a call center with approximately 375 agents in addition to the existing state and local contact tracing workforce (approximately 800 staff statewide). The call center will begin expansion of an initial 1000 agents on May 11th and an expected combined workforce of up to 5000 agents thereafter. DSHS is currently relying on the existing 211 platform to manage calls. The current 211 platform cannot support additional call volume at this time. DSHS is seeking a robust call center solution from vendors that can ramp up quickly and be expanded and enhanced depending on the changing needs during this uncertain time.

Texas Department of State Health Services (DSHS) is seeking proposals for the following:

#### **A. Mobilization and Operation of a Texas Health Contact Tracer Workforce**

The Texas Department of State Health Services (DSHS) is seeking a vendor to propose a contract tracing program and organizational structure. The vendor will

provide management, supervision, resource allocation, scheduling, performance monitoring as defined by DSHS, support and quality assurance functions for a corps of epidemiologists, case investigators, and contact tracers. Epidemiologists, case investigators and contact tracers may be a combination of public health employees, university students, Peace Corp/AmeriCorps volunteers, and others. These organizations may not be identified at the start of engagement and the vendor must be able to incorporate them as they join the effort. The vendor may be asked to hire its own workforce to supplement those mentioned above. All epidemiologists, case investigator, and contact tracers, whether employees of the State or other organizations or hired by the vendor, will utilize the call center and case management tools provided by DSHS or their host organization.

Vendors shall describe how their proposed solution will meet each one of the requirements below.

#### **A.1.1 Program and Operations Management**

- Present a proposed schedule from roll-out to full operations
- Mobilization services to set up processes and procedures to support groups of resources during roll-on
  - o Infrastructure development and processes for onboarding
  - o Staffing approaches to coordinate multiple workforces and drive highest value
  - o Workforce management solution development
- Workforce Management
  - o Daily team management and cadence
  - o Workforce management tool
  - o Capacity/demand modeling for various operational schedules
  - o Resource scheduling
- Operations Performance Metrics
  - o Gathering and reporting of operational metrics
  - o Service level reporting

#### **A.1.2 Program Organization and Workforce**

- Operate and staff a virtual call center from 8 am Central Standard Time to 8 pm Central Standard Time 7 days a week.
- Hire and train management staff to onboard, train, and oversee up to 5000 paid case investigators and contact tracers. Up to 750 HHS System employees have volunteered to participate in the contact tracing effort. They will be paid solely by the agency by which they are employed but will be supervised and managed with respect to contact tracing by the Vendor hired under this solicitation. The Vendor's cost proposal should not include any payment to HHS System employees

participating in contact tracing. Growth in the numbers of investigators and tracers would be based on demand.

- Hire and train supervisors with virtual call center experience to manage epidemiology, case investigator, and contact tracer staff. See attached job description for responsibilities and qualifications.
- Hire and train epidemiologists to provide contact tracing subject matter expertise and serve as an escalation resource for case investigators and contact tracers. See attached job description for responsibilities and qualifications.
- Hire and train case investigators and contact tracing to contact individuals with a lab confirmed positive COVID-19 diagnosis and their close contacts who were potentially exposed. See attached job description for responsibilities and qualifications.
- All recruited staff must have an adequate remote workspace and must meet minimum technical requirements which include but are not limited to possessing their own computing devices and peripherals including headsets and have access to the internet. HHSC is not responsible for equipment, telephone lines (installation, monthly fees or long-distance charges), or high-speed Internet access in a contact tracer's residence. HHSC will provide access to the Texas Health Trace application through Texas.gov.
- Locating and onboarding supplemental contact tracing workforce.
  - o Vet, hire and onboard staff to supplement the volunteer and/or paid workforce. Includes sourcing, conducting background checks, and training

staff for their duties. o US Based workforce is required; sourcing individuals within Texas is preferred.

### **A.1.3 Program Training and Quality Assurance**

- Provide a learning management platform to house training materials, track agents' completion of all required training, and provide a means for team communication.
- Use existing DSHS/Contractor Texas Health Trace application training, DSHS contact tracing processes, HHS Security training and call center training to schedule virtual training classes and document completion.
- Develop and revise standard operating procedures associated with the call center.
- Develop and revise training demonstrating how to use the call center solution.
- Provide virtual, live Train the Trainer sessions, 3 each for both agents and supervisors and as needed to maintain adequate training resources.
- Assess and validate readiness of tracers to transit on from training to operations.
- Hire, train and supervise experienced call center staff to perform quality checks, provide feedback to tracers, and quality reporting

### **A.1.4 Help Desk for Contact Tracers**

- Provide first line support to contact tracers for general COVID related questions, technical questions and functional questions as agreed upon by DSHS.
- Provide Tier 1 Texas Health Trace application and navigation support; Tier 2 and 3 provided by Texas.gov
- Provide Tier 1, Tier 2 and Tier 3 Help Desk services for call center support
- Provide Tier 1 end user workstation technology support • Help Desk Service hours from 8 am to 8 pm 7 days a week.

## **B. Texas Health Trace Call Center Technology**

### **B.1.1 Call Center Telephony Platform**

- Digitally enabled contact center platform for up to 5000 agents
- Provision 1000 work from home agents by May 11, 2020 with a steadily expanding number of agents up to 5000 agents by June 15, 2020.
- Contact Center will be able to support 12x7 operations, including remote workers telecommuting using their personal device, mobile phones, complex call routing, outbound dialing and other needs
- UPI based login for agents with no requirement for VPN or software
- 2-way text capabilities (SMS) that can be integrated with the DSHS Texas Health Trace System
- Interaction recording capabilities enabled
- Call recording and storage of recording for 12 months

- Call-back request capabilities enabled
- Web chat to communicate in real-time using easily accessible web interfaces
- Ability to add hold time messaging; scripting provided by DSHS.
- Toll Free number (toll charges included)
- Customized outbound caller ID (TX DSHS and 800#)
- Interactive Voice Response System (IVR) supporting both English and Spanish (additional options as needed)
- DSHS will provide approved scripts for outbound call tracer phone calls.
- Describe minimum workstation and bandwidth requirements for users of the call center system

### **B.1.2 Reporting, Service Levels and Integration**

- Integration with DSHS Texas Health Trace system or other software integration
- Real time and historical reporting for service levels, call volume, handle time, and abandonment rate on an hourly, daily, weekly, monthly levels.
  - o Industry level service level of 80% in 20 seconds
  - o Industry level abandonment rate of <8%
  - o Industry level service up time 99.999%
- Adhoc reporting capabilities • Ability to transfer data into data visualization tool hosted by HHSC or DSHS.

### **C. Pricing**

Vendors shall provide pricing in the Excel Cost Proposal. Vendors will provide One Time and Monthly Recurring costs. Vendor shall add to the Cost Proposal pricing for any optional services proposed by the Vendor.

## **Job Description – Contact Tracing Case Investigator**

### **Texas COVID-19 Statewide Contact Tracing**

Contact tracing is a process that identifies individuals who may have been in contact with someone who is infected by a virus. Once these contacts are identified, public health workers known as contact tracers communicate with these individuals to warn them of potential exposure and connect them with public health information and services including testing.

The [Texas Department of State Health Services](#) (DSHS) will hire, train and supervise a team working remotely to support DSHS and local health departments to perform COVID-19 contact tracing activities statewide. The aim of this will be to call every person diagnosed with COVID-19, gather information about their contacts, and to call every contact in Texas. This is in tandem with other statewide efforts to increase testing, develop coordinated outbreak management response, increase infrastructure for isolation and quarantine support, if needed, and fortify efforts to control the pandemic in Texas.

### **Position Overview**

Under the supervision of a Contact Tracing Supervisor, the Case Investigator will use the [Texas Health Trace](#) web-based data management platform to call individuals (cases) with a positive diagnostic test for COVID-19, gather information about their contacts, and provide them with connection to resources as needed. Information gathered by Case Investigators will be used by Contact Tracers to notify contacts of potential exposure. The Case Investigator will be part of a team of managers, epidemiology leads, contact tracers, community resource coordinators, and other case investigators.

### **Responsibilities**

- Act as primary point person to call people with a positive diagnostic test for COVID-19 (cases), provide support and information about the disease, and gather information including contacts. Communicate with cases in a professional and empathetic manner.
- Triage and coordinate next steps for support for cases, including referral to social services.
- Collect and record information about each case's contacts in Texas Health Trace.

- Provide contacts with approved information about Texas' quarantine/isolation procedures, and if appropriate, refer them to testing according to protocol and/or to a COVID-19 social resource.
- Escalate issues to epidemiology lead.
- Maintain daily contact with supervisor.
- Perform contact tracing duties for team as necessary based on contact tracer workloads.

### **Qualifications**

- Graduation from an accredited four-year college or university preferred.
- Experience the field of public health, epidemiology, communicable disease control, or a related field preferred
- Experience working in a health, human service, or community-based organization or institutional setting.
- Ability to speak, read, and write English fluently
- Fluency in second or multiple languages a plus
- Ability to work remotely
- Ability to exhibit a professional, positive attitude and work ethic
- Ability to manage and adapt to change
- Excellent interpersonal skills required and ability to show empathy and interact professionally with culturally diverse individuals during a time of crisis and distress
- Excellent organizational and communication skills
- Critical thinking and sound judgment required
- Ability to handle confidential information with discretion and professionalism
- Ability to work through conflict
- Proficiency with computers and data entry into electronic tracking systems
- Ownership of or ability to acquire a personal computer and broadband internet access. A headset is preferred.
- Texas resident and familiarity with Texas' geography



## Other Requirements

Individuals selected for employment:

- are required to follow all scripts, policies and procedures provided by DSHS, and comply with DSHS training regarding confidential information related to personal information.
- must complete the following as part of onboarding:
  - ["Making Contact: A Training for COVID-19 Contact Tracers"](#) offered by the Association of State and Territorial Health Officials
  - Texas Health and Human Services HIPAA training or approved equivalent
  - Texas Health and Human Services Cybersecurity training or approved equivalent
  - Texas Health Trace data system training
  - Texas Health and Human Services Acceptable Use Agreement
- must meet minimum requirements for Personal Computer hardware and software and broadband internet.

The contact tracing call center will operate 7 days a week between the hours of 8am and 8pm Central Standard Time. Evening and/or weekend work may be required.

## **Job Description – Contact Tracer**

### **Texas COVID-19 Statewide Contact Tracing**

Contact tracing is a process that identifies individuals who may have been in contact with someone who is infected by a virus. Once these contacts are identified, public health workers known as contact tracers communicate with these individuals to warn them of potential exposure and connect them with public health information and services including testing.

The [Texas Department of State Health Services](#) (DSHS) will hire, train and supervise a team working remotely to support DSHS and local health departments to perform COVID-19 contact tracing activities statewide. The aim of this will be to call every person diagnosed with COVID-19, gather information about their contacts, and to call every contact in Texas. This is in tandem with other statewide efforts to increase testing, develop coordinated outbreak management response, increase infrastructure for isolation and quarantine support, if needed, and fortify efforts to control the pandemic in Texas.

### **Position Overview**

Under the supervision of a Contact Tracing Supervisor, the Contact Tracer will use the [Texas Health Trace](#) web-based data management platform to call all contacts of anyone diagnosed with COVID-19 to document a symptom check, refer them for testing according to established protocols, and provide them with instructions for quarantine or isolation, if appropriate. The Contact Tracer will be part of a team of managers, epidemiology leads, case investigators, community resource coordinators, and other contact tracers.

### **Responsibilities**

- Call contacts of newly diagnosed patients. Communicate with contacts in a professional and empathetic manner.
- Collect and record information on symptoms into Texas Health Trace.
- Provide contacts with approved information about Texas' quarantine/isolation procedures, and if appropriate, refer them to testing according to protocol and/or to a COVID-19 social resources.
- Follow a script to inform contacts about the importance of quarantine/isolation and what to do if symptoms develop.
- Escalate issues to epidemiology lead.

- Maintain daily contact with supervisor.

### **Qualifications**

- High school diploma, or equivalent required
- Ability to speak, read, and write English fluently
- Fluency in second or multiple languages a plus
- Ability to work remotely
- Ability to exhibit a professional, positive attitude and work ethic
- Excellent interpersonal skills required and ability to show empathy and interact professionally with culturally diverse individuals during a time of crisis and distress
- Excellent organizational and communication skills
- Critical thinking and sound judgment required
- Ability to handle confidential information with discretion and professionalism
- Proficiency with computers and data entry into electronic tracking systems
- Ownership of or ability to acquire a personal computer and broadband internet access. A headset is preferred.
- Texas resident preferred and familiarity with Texas' geography

### **Other Requirements**

Individuals selected for employment:

- are required to follow all scripts, policies and procedures provided by DSHS, and comply with DSHS training regarding confidential information related to personal information.
- must complete the following as part of onboarding:
  - ["Making Contact: A Training for COVID-19 Contact Tracers"](#) offered by the Association of State and Territorial Health Officials
  - Texas Health and Human Services HIPAA training or approved equivalent
  - Texas Health and Human Services Cybersecurity training or approved equivalent

- Texas Health Trace data system training
- Texas Health and Human Services Acceptable Use Agreement
- must meet minimum requirements for Personal Computer hardware and software and broadband internet.

The contact tracing call center will operate 7 days a week between the hours of 8am and 8pm Central Standard Time. Evening and/or weekend work may be required.

### **Job Description – Contact Tracing Epidemiology Lead**

#### **Texas COVID-19 Statewide Contact Tracing**

Contact tracing is a process that identifies individuals who may have been in contact with someone who is infected by a virus. Once these contacts are identified, public health workers known as contact tracers communicate with these individuals to warn them of potential exposure and connect them with public health information and services including testing.

The [Texas Department of State Health Services](#) (DSHS) will hire, train and supervise a team working remotely to support DSHS and local health departments to perform COVID-19 contact tracing activities statewide. The aim of this will be to call every person diagnosed with COVID-19, gather information about their contacts, and to call every contact in Texas. This is in tandem with other statewide efforts to increase testing, develop coordinated outbreak management response, increase infrastructure for isolation and quarantine support, if needed, and fortify efforts to control the pandemic in Texas.

#### **Position Overview**

Under the supervision of a Contact Tracing Supervisor, the Epidemiology (Epi) Lead will lead a virtual team of case investigators and contact tracers and liaise with community resource specialists to call every person diagnosed with COVID-19, call every contact of a person diagnosed with COVID-19 to assess for symptoms, refer to testing and connect to quarantine/isolation resources as needed. The Epi Lead and team will use the [Texas Health Trace](#) web-based data management platform to perform activities.

The Epi Lead is responsible for providing contact tracing subject matter expertise to the team.

## **Responsibilities**

- Lead a team of case investigators and contact tracers
- Triage and escalate issues from the team, brainstorm and implement solutions
- Liaise with local health entity partners
- Maintain daily contact with supervisor
- Perform case investigation and/or contact tracing duties for team as necessary based on team workloads

## **Qualifications**

- Graduation from an accredited four-year college or university with major coursework in epidemiology, microbiology, infectious diseases, biostatistics, or a related field. Master's degree preferred.
- Experience the field of epidemiology, communicable disease control, or a related field. Experience performing public health contact tracing functions preferred.
- Knowledge of the principles and methods of epidemiology
- Experience working in a health, human service, or community-based organization or institutional setting is strongly preferred.
- Experience leading remote staff and/or in a complex environment preferred.
- Ability to speak, read, and write English fluently
- Fluency in second or multiple languages a plus
- Ability to work remotely
- Ability to exhibit a professional, positive attitude and work ethic
- Ability to manage and adapt to change
- Excellent interpersonal skills required and ability to show empathy and interact professionally with culturally diverse individuals during a time of crisis and distress
- Excellent organizational and communication skills
- Critical thinking and sound judgment required
- Ability to handle confidential information with discretion and professionalism

- Ability to work through conflict
- Proficiency with computers and data entry into electronic tracking systems
- Ownership of or ability to acquire a personal computer and broadband internet access. A headset is preferred.
- Texas resident preferred and familiarity with Texas' geography

### **Other Requirements**

Individuals selected for employment:

- are required to follow all scripts, policies and procedures provided by DSHS, and comply with DSHS training regarding confidential information related to personal information.
- must complete the following as part of onboarding:
  - ["Making Contact: A Training for COVID-19 Contact Tracers"](#) offered by the Association of State and Territorial Health Officials
  - Texas Health and Human Services HIPAA training or approved equivalent
  - Texas Health and Human Services Cybersecurity training or approved equivalent
  - Texas Health Trace data system training
  - Texas Health and Human Services Acceptable Use Agreement
- must meet minimum requirements for Personal Computer hardware and software and broadband internet.

The contact tracing call center will operate 7 days a week between the hours of 8am and 8pm Central Standard Time. Evening and/or weekend work may be required.

## **Job Description – Contact Tracing Supervisor**

### **Texas COVID-19 Statewide Contact Tracing**

Contact tracing is a process that identifies individuals who may have been in contact with someone who is infected by a virus. Once these contacts are identified, public health workers known as contact tracers communicate with these individuals to warn them of potential exposure and connect them with public health information and services including testing.

The [Texas Department of State Health Services](#) (DSHS) will hire, train and supervise a team working remotely to support DSHS and local health departments to perform COVID-19 contact tracing activities statewide. The aim of this will be to call every person diagnosed with COVID-19, gather information about their contacts, and to call every contact in Texas. This is in tandem with other statewide efforts to increase testing, develop coordinated outbreak management response, increase infrastructure for isolation and quarantine support, if needed, and fortify efforts to control the pandemic in Texas.

### **Position Overview**

The Contact Tracing Supervisor will oversee virtual teams of epidemiology (epi) leads, case investigators and contact tracers to call every person diagnosed with COVID-19, call every contact of a person diagnosed with COVID-19 to assess for symptoms, refer to testing and connect to quarantine/isolation resources as needed. Teams will use the [Texas Health Trace](#) web-based data management platform to perform activities.

The Supervisor is responsible for the leadership of team, tracking progress against target goals, providing direct supervision, oversight, and mentorship.

### **Responsibilities**

- Supervise a team of contact tracing units that include epi leads, case investigators and contact tracers
- Coach staff on achieving contract tracing goals, offering feedback on performance
- Coordinate schedules and provide daily remote supervision and troubleshooting. Track daily and weekly progress for team members.
- Enforce all policies, procedures, protocols, and communicate process changes or new instructions to the team as appropriate

- Triage and escalate issues from units, brainstorm and implement solutions
- Perform supervision, epidemiology, case investigation and/or contact tracing duties for team as necessary based on workloads

### **Qualifications**

- Graduation from an accredited four-year college or university. Master's degree preferred.
- Experience the field of public health, epidemiology, communicable disease control, or a related field preferred.
- Experience working in a health, human service, or community-based organization or institutional setting.
- At least one year of experience supervising staff. Experience leading remote staff and/or in a complex environment preferred.
- Ability to speak, read, and write English fluently
- Ability to work remotely
- Ability to exhibit a professional, positive attitude and work ethic
- Ability to manage and adapt to change
- Excellent interpersonal skills required and ability to show empathy and interact professionally with culturally diverse individuals during a time of crisis and distress
- Excellent organizational and communication skills
- Critical thinking and sound judgment required
- Ability to handle confidential information with discretion and professionalism
- Ability to work through conflict
- Proficiency with computers and data entry into electronic tracking systems
- Ownership of or ability to acquire a personal computer and broadband internet access. A headset is preferred.
- Texas resident and familiarity with Texas' geography

### **Other Requirements**

Individuals selected for employment:



- are required to follow all scripts, policies and procedures provided by DSHS, and comply with DSHS training regarding confidential information related to personal information.
- must complete the following as part of onboarding:
  - ["Making Contact: A Training for COVID-19 Contact Tracers"](#) offered by the Association of State and Territorial Health Officials
  - Texas Health and Human Services HIPAA training or approved equivalent
  - Texas Health and Human Services Cybersecurity training or approved equivalent
  - Texas Health Trace data system training
  - Texas Health and Human Services Acceptable Use Agreement
- must meet minimum requirements for Personal Computer hardware and software and broadband internet.

The contact tracing call center will operate 7 days a week between the hours of 8am and 8pm Central Standard Time. Evening and/or weekend work may be required.

**ATTACHMENT B**

**BUDGET**

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## ATTACHMENT B BUDGET

Payment Schedule  
Upon Execution - August 31, 2022

Category	Upon Execution- August 31, 2021	September 1, 2021- August 31, 2022	Total
Call Center Resources	\$115,648,878	\$161,100,844	\$276,749,722
License Costs			
- Twilio	\$3,866,811	\$5,131,538	\$8,998,349
- Salesforce	\$802,716	\$1,112,109	\$1,914,825
MTX Program Oversight Team	\$1,220,000	\$1,525,000	\$2,745,000
Platform Implementation (One-Time) (without maintenance and support)	\$1,678,000	0	\$1,678,000
Maintenance and Support	\$450,000	\$562,500	\$1,012,500
<b>OPTIONAL Costs</b> Via Work Order Process- Platform Implementations (One-Time)	\$2,197,400	\$0	\$2,197,400
<b>Total</b>	<b>\$125,863,805</b>	<b>\$169,431,991</b>	<b>\$295,295,796</b>

\*\*Salesforce licenses only include new MTX sourced state. MTX assumes Texas provided tracers already have licenses

### Hourly Fees:

Resource	Rate/Hour
Contact Tracer	\$33.00
Supervisor/Team Lead	\$67.10
Epidemiologist Lead	\$67.10

Summary of Optional Costs via Work Order	Optional
Communication Center - Call Center/Case Management	\$137,000
Contact Tracing Platform	\$350,000
Disease Monitoring & Control Application	\$100,000
Schedule & Test Center Management	\$150,000
Learning Management System	\$350,000
SMS Text Messaging (supports Disease Monitoring Control)	\$100,000
Marketing Cloud	\$58,900
SFDC Shield and Security & Permissions	
Integration and Data Migration	\$200,000
Change Enablement and Management	
Twilio IVR - Design, Support and Validation	\$189,000
Support and Maintenance	Optional
Support and Enhancement Subscription - 18 month (250 hours)	\$562,500
<b>Total Optional Costs</b>	<b>\$2,197,400</b>

**ATTACHMENT C**

**HHSC UNIFORM TERMS AND CONDITIONS**

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Attachment C



# TEXAS

## Health and Human Services

**Health and Human Services (HHS)**

**Uniform Terms and Conditions - Vendor**

**Version 3.0**

Published and Effective - November 7, 2019

Responsible Office: Chief Counsel

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## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract other than those permitted by Work Orders.

“Attachment” means documents, terms, conditions, or information added to this Contract following the Signature Document or included by reference and made a part of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, or Work Orders that may be issued by the System Agency, to be incorporated by reference for all purposes.

“Contractor” means the Party selected to provide the goods or Services to the State under this Contract.

“Deliverable” means a Work Product(s), including all reports and project documentation, prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Goods” means supplies, materials, or equipment.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code, or its designee.

“Health and Human Services” or “HHS” includes the Department of State Health Services (DSHS), in addition to the Health and Human Services Commission.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property Rights” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such rights may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;

- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
- iv. domain name registrations; and
- v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“Parties” means the System Agency and Contractor, collectively.

“Party” means either the System Agency or Contractor, individually.

“Project” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“Scope of Work” means the description of Services and Deliverables specified in the Contract and as may be amended.

“Services” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

“Signature Document” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“Solicitation” means the document issued by the System Agency (including any published addenda, exhibits, and Attachments) under which the goods or Services provided under the Contract were initially requested, which is incorporated by reference for all purposes in its entirety.

“Solicitation Response” means Contractor’s full and complete response (including any Attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

“State Fiscal Year” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“State of Texas Textravel” means the State Travel Management Program through the Texas Comptroller of Public Accounts website and Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“Subcontract” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“Subcontractor” means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

“System Agency” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under state law and the officers, employees, authorized representatives, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

**“Third Party IP”** means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a Subcontractor.

**“Work”** means all Services to be performed, goods to be delivered, and any appurtenant actions performed, and items produced, conceived, or developed, including Deliverables.

**“Work Order”** means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

**“Work Product”** means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the Deliverables, that are developed, produced, generated, or provided by Contractor in connection with Contractor’s performance of its duties under the Contract or through use of any funding provided under this Contract.

## **1.2 INTERPRETIVE PROVISIONS**

- A. The meanings of defined terms include the singular and plural forms.
- B. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- C. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- D. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- G. All Attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- I. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- J. Time is of the essence in this Contract.

## **ARTICLE II. PAYMENT PROVISIONS**

### **2.1 PROMPT PAYMENT**

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

### **2.2 ANCILLARY AND TRAVEL EXPENSES**

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas *Textravel* available at the Texas Comptroller of Public Accounts State Travel Management Program website.

### **2.3 NO QUANTITY GUARANTEES**

The System Agency makes no guarantee of volume or usage of work under this Contract. All Work requested may be on an irregular and as needed basis throughout the Contract term.

### **2.4 TAXES**

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. System Agency shall not be liable for any taxes resulting from the contract.

## **ARTICLE III. STATE AND FEDERAL FUNDING**

### **3.1 EXCESS OBLIGATIONS PROHIBITED**

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Contractor for any damages that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice.

### **3.2 NO DEBT AGAINST THE STATE**

This Contract will not be construed as creating any debt by or on behalf of the State of Texas.

### 3.3 DEBT AND DELINQUENCIES

Contractor agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

### 3.4 REFUNDS AND OVERPAYMENTS

- A. At its sole discretion, the System Agency may:
- i. withhold all or part of any payments to Contractor to offset overpayments, unallowable or ineligible costs made to the Contractor, or if any required financial status report(s) is not submitted by the due date(s); or,
  - ii. require Contractor to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.
- B. "Overpayments," as used in this Section, include payments:
- i. made by the System Agency that exceed the maximum allowable rates;
  - ii. that are not allowed under applicable laws, rules, or regulations; or,
  - iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs shall be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

## ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS

### 4.1 WARRANTY

Contractor warrants that all Work under this Contract shall be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Contract; and all Deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Contractor has failed to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Contractor, at its sole expense, to:

- i. Repair or replace all defective or damaged Work;
- ii. Refund any payment Contractor received from System Agency for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and,
- iii. Take necessary action to ensure that Contractor's future performance and Work conform to the Contract requirements.

### 4.2 GENERAL AFFIRMATIONS

Contractor certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the Contractor has reviewed the General Affirmations and that Contractor is in compliance with all requirements.

### 4.3 FEDERAL ASSURANCES

Contractor certifies that, to the extent federal assurances are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal assurances and that Contractor is in compliance with all requirements.

### 4.4 FEDERAL CERTIFICATIONS

Contractor certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal certifications and that Contractor is in compliance with all requirements. In addition, Contractor certifies that it is and shall remain in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Contract.

## ARTICLE V. INTELLECTUAL PROPERTY

### 5.1 OWNERSHIP OF WORK PRODUCT

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Contractor hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.
- C. Contractor agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to System Agency, Contractor hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Contractor. Contractor shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

### 5.2 CONTRACTOR'S PRE-EXISTING WORKS

- A. To the extent that Contractor incorporates into the Work Product any works of Contractor that were created by Contractor or that Contractor acquired rights in prior to the Effective



Date of this Contract (“**Incorporated Pre-existing Works**”), Contractor retains ownership of such Incorporated Pre-existing Works.

- B. Contractor hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
- C. Contractor represents, warrants, and covenants to System Agency that Contractor has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

### 5.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Contractor, Contractor hereby grants to System Agency, or shall obtain from the applicable third party for System Agency’s benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency’s internal business purposes only,
  - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
  - ii. to authorize others to do any or all of the foregoing.
- B. Contractor shall obtain System Agency’s advance written approval prior to incorporating any Third Party IP into the Work Product, and Contractor shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
- C. Contractor shall provide System Agency all supporting documentation demonstrating Contractor’s compliance with this **Section 5.3**, including without limitation documentation indicating a third party’s written approval for Contractor to use any Third Party IP that may be incorporated in the Work Product.

### 5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

Contractor shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Contractor’s compliance with Contractor’s obligations under this **Article V**.

### 5.5 DELIVERY UPON TERMINATION OR EXPIRATION

No later than the first calendar day after the termination or expiration of the Contract or upon System Agency’s request, Contractor shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Contractor’s failure to timely deliver such Work Product is a material breach of the Contract. Contractor will not retain any copies of the Work Product or any documentation or other products or results of Contractor’s activities under the Contract without the prior written consent of System Agency.

### 5.6 SURVIVAL

The provisions and obligations of this **Article V** survive any termination or expiration of the Contract.

## 5.7 SYSTEM AGENCY DATA

- A. As between the Parties, all data and information acquired, accessed, or made available to Contractor by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Contractor in the course of providing data processing services in connection with Contractor's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Contractor has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Contractor to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Contractor is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Contractor shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Contractor's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Contractor's performance of its obligations hereunder.

## ARTICLE VI PROPERTY

### 6.1 USE OF STATE PROPERTY

- A. Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.*, laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Contractor shall not perform any maintenance services on State Property unless the Contract expressly authorizes such Services.
- E. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for:
  - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
  - ii. all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to System Agency within ten (10) calendar days of Contractor's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.



## **6.2 DAMAGE TO GOVERNMENT PROPERTY**

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Contractor or Contractor's employees, agents, Subcontractors, and suppliers, Contractor shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Contractor shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Contractor shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Contractor's receipt of System Agency's notice of amount due.

## **6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT**

In the event the Contract is terminated for any reason, or upon its expiration State Property remains the property of the System Agency and must be returned to the System Agency by the end date of the Contract or upon System Agency's request.

# **ARTICLE VII. WORK ORDERS**

## **7.1 WORK ORDERS**

If the Contract is for indefinite quantities of Services, as specified in the Signature Document, all Work will be performed in accordance with properly executed Work Orders.

## **7.2 PROPOSALS**

For Work Order contracts, the Contractor shall submit to System Agency separate proposals, including pricing and a project plan for each Project.

## **7.3 RESPONSIBILITY**

For each approved Project, the Contractor shall be responsible for all Work assigned under the Work Order. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of Services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and any other information or special conditions as may be necessary for the Work assigned.

## **7.4 TERMINATION**

If this Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until this Work Order is terminated or expires; and the Contract and this Work Order may be amended after such termination or expiration to extend the performance period or add ancillary deliverables or services, only to the extent necessary.

# **ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY**

## **8.1 RECORD MAINTENANCE AND RETENTION**

- A. Contractor shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives

sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

- B. Contractor shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Contractor for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

## **8.2 AGENCY'S RIGHT TO AUDIT**

- A. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

## **8.3 RESPONSE TO COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS**

- A. Contractor must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the Services and Deliverables provided. Any such correction will be at Contractor's or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance shall be solely the decision of the System Agency.

- B. As part of the Services, Contractor must provide to System Agency upon request a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

#### **8.4 STATE AUDITOR'S RIGHT TO AUDIT**

- A. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- B. The Contractor shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

#### **8.5 CONFIDENTIALITY**

Contractor shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Contractor under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Contractor.

### **ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION**

#### **9.1 CONTRACT REMEDIES**

To ensure Contractor's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Contractor accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Contractor to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Contractor found to be in error;
- iv. suspending, limiting, or placing conditions on the Contractor's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

#### **9.2 TERMINATION FOR CONVENIENCE**

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of

the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

### **9.3 TERMINATION FOR CAUSE**

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

#### **i. Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, in its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's addition to the System for Award Management (SAM) will also constitute a material breach of the Contract.

#### **ii. Failure to Maintain Financial Viability**

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Contractor no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

### **9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS**

If the System Agency terminates the Contract for cause, the Contractor shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Contractor. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

## **ARTICLE X. INDEMNITY**

### **10.1 GENERAL INDEMNITY**

- A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR LESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT.**
- B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES**

**RESULTING FROM THE NEGLIGENT ACTS OF OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**

- C. For the avoidance of doubt, System Agency shall not indemnify Contractor or any other entity under the Contract.**

## **10.2 INTELLECTUAL PROPERTY**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:**

- i. THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT;**
- ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR**
- iii. SYSTEM AGENCY'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY CONTRACTOR OR OTHERWISE TO WHICH SYSTEM AGENCY HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT.**

## **10.3 ADDITIONAL INDEMNITY PROVISIONS**

- A. CONTRACTOR AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.**
- B. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.**
- C. CONTRACTOR SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.**

## ARTICLE XI. GENERAL PROVISIONS

### 11.1 AMENDMENT

The Contract may only be amended by an Amendment executed by both Parties.

### 11.2 INSURANCE

- A. Unless otherwise specified in this Contract, Contractor shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Contractor shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.
- B. These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

### 11.3 LIMITATION ON AUTHORITY

- A. The authority granted to Contractor by the System Agency is limited to the terms of the Contract.
- B. Contractor shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Contractor may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Contractor may not rely upon implied authority and is not granted authority under the Contract to:
  - i. Make public policy on behalf of the System Agency;
  - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
  - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Contractor, the Contractor shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

### 11.4 LEGAL OBLIGATIONS

Contractor shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use



of information and communication technology. Contractor shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

#### **11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS**

Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

#### **11.6 E-VERIFY PROGRAM**

Contractor certifies that for Contracts for Services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Contractor to perform Work pursuant to the Contract within the United States of America.

#### **11.7 PERMITTING AND LICENSURE**

At Contractor's sole expense, Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract. Contractor shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

#### **11.8 SUBCONTRACTORS**

Contractor may not subcontract any or all of the Work and/or obligations under the Contract without prior written approval of the System Agency. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor Subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such Subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all Subcontracts are rendered in compliance with the Contract.

#### **11.9 INDEPENDENT CONTRACTOR**

Contractor and Contractor's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Contractor nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Contractor shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee

benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and System Agency.

#### **11.10 GOVERNING LAW AND VENUE**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

#### **11.11 SEVERABILITY**

If any provision of the Contract is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Contract. It is the intent and agreement of the Parties this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

#### **11.12 SURVIVABILITY**

Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

#### **11.13 FORCE MAJEURE**

Neither Contractor nor System Agency shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

#### **11.14 DISPUTE RESOLUTION**

A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Contractor's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas



Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- B. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **11.15 NO IMPLIED WAIVER OF PROVISIONS**

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Contractor which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

#### **11.16 MEDIA RELEASES**

- A. Contractor shall not use System Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

#### **11.17 NO MARKETING ACTIVITIES**

Contractor is prohibited from using the Work for any Contractor or third-party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Contractor as part of the Work.

#### **11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS**

Contractor shall not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

### 11.19 SOVEREIGN IMMUNITY

Nothing in the Contract shall be construed as a waiver of the System Agency's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

### 11.20 ENTIRE CONTRACT AND MODIFICATION

This Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible.

### 11.21 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

### 11.22 CIVIL RIGHTS

- A. Contractor shall comply with all applicable state and federal anti-discrimination laws, including:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
  - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
  - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
  - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
  - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
  - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Contractor shall comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Contractor shall comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor shall take reasonable steps to provide services

and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

Contractor shall post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at:

<http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- D. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B § 25.130 which includes requiring contractor to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the contractor can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- E. Contractor shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 15, as applicable. Contractor shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- F. Upon request, Contractor shall provide the HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- G. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:  
 HHSC Civil Rights Office  
 701 W. 51<sup>st</sup> Street, Mail Code W206  
 Austin, Texas 78751  
 Phone Toll Free: (888) 388-6332  
 Phone: (512) 438-4313  
 Fax: (512) 438-5885.

### **11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

Contractor shall conform to HHS standards for data management as described by the policies of the HHS Chief Data and Analytics Officer. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

### **11.24 DISCLOSURE OF LITIGATION**

- A. The Contractor must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Contractor. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Contractor must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any

development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Contractor's financial condition.

- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

#### **11.25 NO THIRD-PARTY BENEFICIARIES**

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

#### **11.26 BINDING EFFECT**

The Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

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Unofficial copy Travis Co. District Clerk Vera L. Price

**ATTACHMENT D**

**ADDITIONAL PROVISIONS**

Unofficial copy Travis Co. District Clerk Velda L. Price

**ATTACHMENT D  
ADDITIONAL PROVISIONS**



**TEXAS**  
**Health and Human Services**

**Health and Human Services (HHS)  
Additional Provisions  
Version 1.0  
Effective: November 7, 2019**

Unofficial copy Travis Co. District Clerk Velda L. Price

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## **ADDITIONAL PROVISIONS**

The terms and conditions of these Additional Provisions are incorporated into and made a part of the Contract. Capitalized items used in these Additional Provisions and not otherwise defined have the meanings assigned to them in HHSC Uniform Terms and Conditions.

### **1. DSHS APPROVAL OF STAFFING**

- A. Contractor shall not employ or contract with or permit the employment of unfit or unqualified persons or persons not skilled in the tasks assigned to them. The Contractor shall at all times employ sufficient labor to carry out functions and services in the manner and time prescribed by the Contract. The Contractor shall be responsible to HHSC for the acts and omissions of the Contractor's employees, agents (including, but not limited to, lobbyists) and Subcontractors and the Contractor shall enforce strict discipline among the Contractor's employees, agents (including, but not limited to, lobbyists) and Subcontractors performing the services under the Contract.
- B. Any person employed by the Contractor shall, at the written request of System Agency, and within System Agency's sole discretion, be removed immediately by the Contractor from work relating to the Contract.

### **2. TURNOVER PLAN**

DSHS, in its sole discretion, may require Contractor to develop and submit a Turnover Plan at any time during the term of the Contract. Contractor must submit the Turnover Plan to HHSC for review and approval. The Turnover Plan must describe Contractor's policies and procedures that will ensure:

- i. The least disruption in the delivery of the Work during Turnover to DSHS or its designee; and
- ii. Full cooperation with DSHS or its designee in transferring the Work and the obligations of the Contract.

### **3. TURNOVER ASSISTANCE**

Contractor will provide any assistance and actions reasonably necessary to enable DSHS or its designee to effectively close out the Contract and transfer the Work and the obligations of the Contract to another vendor or to perform the Work by itself. Contractor agrees that this obligation survives the termination, regardless of whether for cause or convenience, or the expiration of the Contract and remains in effect until completed to the satisfaction of DSHS.

### **4. TRADEMARK OWNERSHIP**

Contractor acknowledges and agrees that the DSHS trademarks remain the exclusive property of DSHS, that all right, title and interest in and to the trademarks is exclusively held by DSHS, and all goodwill associated with such trademarks inures solely to DSHS.

### **5. DISCOUNTS**

If Contractor at any time during the term of the Contract provides a discount on the final contract costs, Contractor will notify DSHS in writing at least ten (10) calendar days prior to



the effective date of the discount. DSHS will generate a Purchase Order Change Notice and send a revised Purchase Order to Contractor.

#### **6. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS**

- A. Contractor shall immediately report in writing to its assigned HHSC contract manager when Contractor learns of or has any reason to believe it or any person with ownership or controlling interest in Contractor, or their agent, employee, subcontractor or volunteer who is providing services under this Contract has:
  - i. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
  - ii. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- B. Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

#### **7. NOTICE OF IRS OR TWC INSOLVENCY**

Contractor shall notify in writing its assigned DSHS contract manager of any insolvency, incapacity or outstanding unpaid obligations of Contractor owed to the Internal Revenue Service or the State of Texas, or any agency or political subdivision of the State of Texas within five days of the date of Contractor becoming aware of such.

#### **8. DISASTER SERVICES**

In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster declared by the appropriate federal official, Contractor may be called upon to assist the System Agency in providing the following services:

- i. Community evacuation;
- ii. Health and medical assistance;
- iii. Assessment of health and medical needs;
- iv. Health surveillance;
- v. Medical care personnel;
- vi. Health and medical equipment and supplies;
- vii. Patient evacuation;
- viii. In-hospital care and hospital facility status;
- ix. Food, drug and medical device safety;
- x. Worker health and safety;
- xi. Mental health and substance abuse;
- xii. Public health information;
- xiii. Vector control and veterinary services; and
- xiv. Victim identification and mortuary services.

**9. NOTICE OF A LICENSE ACTION**

Contractor shall notify its assigned DSHS contract manager of any action impacting Contractor's license to provide services under this Contract within five days of becoming aware of the action and include the following:

- i. Reason for such action;
- ii. Name and contact information of the local, state or federal department or agency or entity;
- iii. Date of the license action; and
- iv. License or case reference number.

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**ATTACHMENT E**

**GENERAL AFFIRMATIONS**

Unofficial copy Travis Co. District Clerk Velda L. Price

## Attachment E

## HEALTH AND HUMAN SERVICES CONTRACT AFFIRMATIONS

The term "System Agency" used in these affirmations means HHS or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under Texas law and the officers, employees, authorized representatives, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.
2. **Complete and Accurate Information**  
Contractor represents and warrants that all statements and information provided to System Agency are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.
3. **Public Information Act**  
Contractor understands that System Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
4. **Contracting Information Requirements**  
Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**5. Assignment**

- A. Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity

**6. Terms and Conditions Attached to Response**

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from System Agency's terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

**7. System Agency Right to Use**

Contractor agrees that System Agency has the right to use, produce, and distribute copies of and to disclose to System Agency employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as System Agency deems necessary to complete the procurement process or comply with state or federal laws.

**8. Release from Liability**

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

**9. Dealings with Public Servants**

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

**10. Financial Participation Prohibited**

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**11. Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**12. Child Support Obligation**

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

**13. Suspension and Debarment**

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

**14. Excluded Parties**

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.'

**15. Foreign Terrorists Organizations**

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**16. Executive Head of a State Agency**

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

**17. Human Trafficking Prohibition**

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**18. Franchise Tax Status**

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

**19. Debts and Delinquencies**

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

**20. Lobbying Prohibition**

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

**21. Buy Texas**

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

**22. Disaster Recovery Plan**

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

**23. Technology Access**

- A. Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to System Agency that the technology provided to System Agency for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
  - i. providing equivalent access for effective use by both visual and non-visual means;
  - ii. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
  - iii. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
- B. For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as



assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

- C. In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

**24. Computer Equipment Recycling Program**

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

**25. Television Equipment Recycling**

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

**26. Cybersecurity Training**

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

**27. Restricted Employment for Certain State Personnel**

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

**28. Disclosure of Prior State Employment**

If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related



Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following:

- i. the nature of the previous employment with System Agency or the other agency;
- ii. the date the employment was terminated; and
- iii. the annual rate of compensation at the time of the employment was terminated.

**29. No Conflicts of Interest**

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

**30. Fraud, Waste, and Abuse**

Contractor understands that System Agency does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud including, but not limited to, HHS Circular C-027.

**31. Antitrust**

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

### 32. Legal and Regulatory Actions

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

### 33. No Felony Criminal Convictions

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

### 34. Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

### 35. Entirety that Boycott Israel

Pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that either:

- i. it meets an exemption criteria under Section 2271.002; or
- ii. it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Contractor refuses to make that certification,

Contractor shall state here any facts that make it exempt from the boycott certification:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_.

**36. E-Verify Program**

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

**37. Professional or Consulting Contract**

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

**38. Former Agency Employees**

Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those who will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.

**39. Disclosure of Prior State Employment**

If this Contract is for consulting services,

- A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:
  - i. Name of individual(s) (Respondent or employee(s));
  - ii. Status;
  - iii. The nature of the previous employment with HHSC or the other State of Texas agency;

- iv. The date the employment was terminated and the reason for the termination; and
  - v. The annual rate of compensation for the employment at the time of its termination.
- B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

#### 40. **Abortion Funding Limitation**

Contractor understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

- i. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
- ii. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
- iii. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

#### 41. **Funding Eligibility**

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Contractor refuses to make that certification, Contractor shall state here any facts that make it exempt from the certification:

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#### 42. **False Representation**

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

#### 43. **False Statements**

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material

misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

**44. Permits and License**

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

**45. Drug-Free Workplace**

Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 et seq.) and maintain a drug-free work environment.

**46. Equal Employment Opportunity**

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

**47. Federal Occupational Safety and Health Law**

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

**48. Signature Authority**

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

Authorized representative on behalf of Contractor must complete and sign the following:

MTX Group Inc

**Legal Name of Contractor**

N/A

**Assumed Business Name of Contractor, if applicable (D.B.A. or 'doing business as')**

NA

**Texas County(s) for Assumed Business Name (D.B.A. or 'doing business as')**

**Attach Assumed Name Certificate(s) for each County**

DocuSigned by:

Das Nobel

BDC67FA4CE424B1

**Signature of Authorized Representative**

May 13, 2020

**Date Signed**

Das Nobel

Chief Executive Officer

**Printed Name of Authorized Representative  
First, Middle Name or Initial, and Last Name**

**Title of Authorized Representative**

1450 Western Ave, STE 304

Albany, NY 12203

**Physical Street Address**

**City, State, Zip Code**

Same

same

**Mailing Address, if different**

**City, State, Zip Code**

518-229-6350

na

**Phone Number**

**Fax Number**

das@mtxb2b.com

11-711-3888

**Email Address**

**DUNS Number**

82-4828973

32068766131

**Federal Employer Identification Number**

**Texas Payee ID No. – 11 digits**

32068766131

0803274691

**Texas Franchise Tax Number**

**Texas Secretary of State Filing  
Number**

**ATTACHMENT F**

**DATA USE AGREEMENT**

Unofficial copy Travis Co. District Clerk Velda L. Price

## Attachment F

**DATA USE AGREEMENT  
BETWEEN THE  
TEXAS HEALTH AND HUMAN SERVICES SYSTEM  
AND  
CONTRACTOR**

This Data Use Agreement ("DUA") is effective as of the date of the Base Contract into which it is incorporated ("Effective Date"), by and between the Texas Health and Human Services System, which includes the Texas Health and Human Services Commission and the Department of State Health Services ("HHS") and Contractor (the "Base Contract").

**ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE**

The purpose of this DUA is to facilitate access to, creation, receipt, maintenance, use, disclosure or transmission of Confidential Information with Contractor, and describe Contractor's rights and obligations with respect to the Confidential Information and the limited purposes for which the Contractor may create, receive, maintain, use, disclose or have access to Confidential Information. This DUA also describes HHS's remedies in the event of Contractor's noncompliance with its obligations under this DUA. This DUA applies to both HHS business associates, as "business associate" is defined in the Health Insurance Portability and Accountability Act (HIPAA), and contractors who are not business associates, who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract. As a best practice, HHS requires its contractors to comply with the terms of this DUA to safeguard all types of Confidential Information.

As of the Effective Date of this DUA, if any provision of the Base Contract conflicts with this DUA, this DUA controls.

**ARTICLE 2. DEFINITIONS**

For the purposes of this DUA, capitalized, underlined terms have the following meanings:

**"Authorized Purpose"** means the specific purpose or purposes described in the Base Contract for Contractor to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

**"Authorized User"** means a person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom Contractor warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

**"Breach"** means an impermissible use or disclosure of electronic or non-electronic sensitive personal information by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of Confidential Information such that the use or disclosure poses a risk of reputational harm, theft of financial information, identity theft, or medical identity theft. Any acquisition, access, use, disclosure or loss of Confidential Information other than as permitted by this



DUA shall be presumed to be a Breach unless Contractor demonstrates, based on a risk assessment, that there is a low probability that the Confidential Information has been compromised.

**“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to Contractor or that Contractor may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Education records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99
- (2) Federal Tax Information as defined in Internal Revenue Code §6103 and Internal Revenue Service Publication 1075;
- (3) Personal Identifying Information (PII) as defined in Texas Business and Commerce Code, Chapter 521;
- (4) Protected Health Information (PHI) in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information as defined in 45 C.F.R. §160.103;
- (5) Sensitive Personal Information (SPI) as defined in Texas Business and Commerce Code, Chapter 521;
- (6) Social Security Administration Data, including, without limitation, Medicaid information means disclosures of information made by the Social Security Administration or the Centers for Medicare and Medicaid Services from a federal system of records for administration of federally funded benefit programs under the Social Security Act, 42 U.S.C., Chapter 7;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act Texas Government Code, Chapter 552.

**“Destroy”, “Destruction”, for Confidential Information,** means:

(1) Paper, film, or other hard copy media have been shredded or destroyed such that the Confidential Information cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.

(2) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, “Guidelines for Media Sanitization,” such that the Confidential Information cannot be retrieved.

**“Discover, Discovery”** means the first day on which a Breach becomes known to Contractor, or, by exercising reasonable diligence would have been known to Contractor.

**“Legally Authorized Representative”** of an individual, including as provided in 45 CFR 435.923 (authorized representative); 45 CFR 164.502(g)(1) (personal representative); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code §166.164 (medical power of attorney); and Texas Estates Code § 22.031 (representative).

**“Required by Law”** means a mandate contained in law that compels an entity to use or disclose Confidential Information that is enforceable in a court of law, including court orders, warrants, subpoenas or investigative demands.

**“Subcontractor”** means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

**“Workforce”** means employees, volunteers, trainees or other persons whose performance of work is under the direct control of a party, whether or not they are paid by that party.

### ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

#### **Section 3.01 Obligations of Contractor**

Contractor agrees that:

**(A) With respect to PHI, Contractor shall:**

- (1) Make PHI available in a designated record set if requested by HHS, if Contractor maintains PHI in a designated record set, as defined in HIPAA.
- (2) Provide to HHS data aggregation services related to the healthcare operations Contractor performs for HHS pursuant to the Base Contract, if requested by HHS, if Contractor provides data aggregation services as defined in HIPAA.
- (3) Provide access to PHI to an individual who is requesting his or her own PHI, or such individual's Legally Authorized Representative, in compliance with the requirements of HIPAA.
- (4) Make PHI available to HHS for amendment, and incorporate any amendments to PHI that HHS directs, in compliance with HIPAA.
- (5) Document and make available to HHS, an accounting of disclosures in compliance with the requirements of HIPAA.
- (6) If Contractor receives a request for access, amendment or accounting of PHI by any individual, promptly forward the request to HHS or, if forwarding the request would violate HIPAA, promptly notify HHS of the request and of Contractor's response. HHS will respond to all such requests, unless Contractor is Required by Law to respond or HHS has given prior written consent for Contractor to respond to and account for all such requests.

**(B) With respect to ALL Confidential Information, Contractor shall:**

- (1) Exercise reasonable care and no less than the same degree of care Contractor uses to protect its own confidential, proprietary and trade secret information to prevent Confidential Information from being used in a manner that is not expressly an Authorized Purpose or as Required by Law. Contractor will access, create, maintain, receive, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses.
- (2) Establish, implement and maintain appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, in accordance with applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as Contractor has such Confidential Information in its actual or constructive possession.
- (3) Implement, update as necessary, and document privacy, security and Breach notice policies and procedures and an incident response plan to address a Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Base Contract. Contractor

shall produce, within three business days of a request by HHS, copies of its policies and procedures and records relating to the use or disclosure of Confidential Information.

(4) Obtain HHS's prior written consent to disclose or allow access to any portion of the Confidential Information to any person, other than Authorized Users, Workforce or Subcontractors of Contractor who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Breach to Contractor's management and as permitted in Section 3.01(A)(3), above. Contractor shall produce evidence of completed training to HHS upon request. HHS, at its election, may assist Contractor in training and education on specific or unique HHS processes, systems and/or requirements. All of Contractor's Authorized Users, Workforce and Subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code Section 2054.519 by the Texas Department of Information Resources.

(5) Establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. Contractor shall maintain evidence of sanctions and produce it to HHS upon request.

(6) Obtain prior written approval of HHS, to disclose or provide access to any Confidential Information on the basis that such act is Required by Law, so that HHS may have the opportunity to object to the disclosure or access and seek appropriate relief. If HHS objects to such disclosure or access, Contractor shall refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief.

(7) Certify that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose and that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. Contractor and its Subcontractors shall maintain at all times an updated, complete, accurate list of Authorized Users and supply it to HHS upon request.

(8) Provide, and shall cause its Subcontractors and agents to provide, to HHS periodic written confirmation of compliance with controls and the terms and conditions of this DUA.

(9) Return to HHS or Destroy, at HHS's election and at Contractor's expense, all Confidential Information received from HHS or created or maintained by Contractor or any of Contractor's agents or Subcontractors on HHS's behalf upon the termination or expiration of this DUA, if reasonably feasible and permitted by law. Contractor shall certify in writing to HHS that all such Confidential Information has been Destroyed or returned to HHS, and that Contractor and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, Contractor acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, Contractor shall immediately notify HHS of the reasons such return or Destruction is not feasible and agree to extend the protections of this DUA to the Confidential Information for as long as Contractor maintains such Confidential Information.

(10) Complete and return with the Base Contract to HHS, attached as Attachment 2 to this DUA, the HHS Security and Privacy Initial Inquiry (SPI) at <https://hhs.texas.gov/laws-regulations/forms/miscellaneous/hhs-information-security-privacy-initial-inquiry-spi>. The SPI identifies basic privacy and security controls with which Contractor must comply to protect Confidential Information. Contractor shall comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information Contractor creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. Contractor's

security controls shall be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. Contractor shall update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and shall provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements.

(11) Comply with the HHS Acceptable Use Policy (AUP) and require each Subcontractor and Workforce member who has direct access to HHS Information Resources, as defined in the AUP, to execute an HHS Acceptable Use Agreement.

(12) Only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or encryption at an appropriate level as required by rule, regulation or law. Confidential Information at rest requires encryption unless there is adequate administrative, technical, and physical security as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information shall be through secure systems. Contractor shall provide proof of system, media or device security and/or encryption to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit, or the Discovery of a Breach. HHS may also request production of proof of security at other times as necessary to satisfy state and federal monitoring requirements. Deidentification of Confidential Information in accordance with HIPAA de-identification standards is deemed secure.

(13) Designate and identify a person or persons, as Privacy Official and Information Security Official, each of whom is authorized to act on behalf of Contractor and is responsible for the development and implementation of the privacy and security requirements in this DUA. Contractor shall provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. Upon written notice from HHS, Contractor shall promptly remove and replace such official(s) if such official(s) is not performing the required functions.

(14) Make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, Confidential Information in accordance with applicable laws, regulations or demands of a regulatory authority relating to Confidential Information. Contractor shall provide such information in a time and manner reasonably agreed upon or as designated by the applicable law or regulatory authority.

(15) Comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 17-12;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;

- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI;
- Family Educational Rights and Privacy Act
- Texas Business and Commerce Code, Chapter 521;
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that Contractor supports on behalf of HHS.

(16) Be permitted to use or disclose Confidential Information for the proper management and administration of Contractor or to carry out Contractor's legal responsibilities, except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, if:

- (a) Disclosure is Required by Law;
- (b) Contractor obtains reasonable assurances from the person to whom the information is disclosed that the person shall:
  1. Maintain the confidentiality of the Confidential Information in accordance with this DUA;
  2. Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the person; and
  3. Notify Contractor in accordance with Section 4.01 of a Breach of Confidential Information that the person Discovers or should have Discovered with the exercise of reasonable diligence.

**(C) With respect to ALL Confidential Information, Contractor shall NOT:**

- (1) Attempt to re-identify or further identify Confidential Information that has been deidentified, or attempt to contact any persons whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS.
- (2) Engage in prohibited marketing or sale of Confidential Information.
- (3) Permit or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of HHS without requiring that Subcontractor first execute either the Form Subcontractor Agreement, Attachment 1, or Contractor's own Subcontractor agreement that ensures that the Subcontractor shall comply with the same safeguards and restrictions contained in this DUA for Confidential Information. Contractor is directly responsible for its Subcontractors' compliance with, and enforcement of, this DUA.

## ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

### **Section 4.01. Cooperation and Financial Responsibility.**

(A) Contractor shall, at Contractor's expense, cooperate fully with HHS in investigating, mitigating to the extent practicable, and issuing notifications as directed by HHS, for any Breach of Confidential Information.

(B) Contractor shall make Confidential Information in Contractor's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach.

(C) Contractor's obligation begins at the Discovery of a Breach and continues as long as related activity continues, until all effects of the Breach are mitigated to HHS's satisfaction (the "incident response period").

### **Section 4.02. Initial Breach Notice.**

For federal information *obtained from a federal system of records*, including Federal Tax Information and Social Security Administration Data (which includes Medicaid and other governmental benefit program Confidential Information), Contractor shall notify HHS of the Breach within the first consecutive clock hour of Discovery. The Base Contract shall specify whether Confidential Information is obtained from a federal system of records. For all other types of Confidential Information Contractor shall notify HHS of the Breach not more than 24 hours after Discovery, *or in a timeframe otherwise approved by HHS in writing*. Contractor shall initially report to HHS's Privacy and Security Officers via email at: [privacy@HHSC.state.tx.us](mailto:privacy@HHSC.state.tx.us) and to the HHS division responsible for the Base Contract.

Contractor shall report all information reasonably available to Contractor about the Breach.

Contractor shall provide contact information to HHS for Contractor's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

**Section 4.03 Third Business Day Notice** No later than 5 p.m. on the third business day after Discovery, or a time within which Discovery reasonably should have been made by Contractor of a Breach of Confidential Information, Contractor shall provide written notification to HHS of all reasonably available information about the Breach, and Contractor's investigation, including, to the extent known to Contractor:

- a. The date the Breach occurred;
- b. The date of Contractor's and, if applicable, Subcontractor's Discovery;
- c. A brief description of the Breach, including how it occurred and who is responsible (or hypotheses, if not yet determined);
- d. A brief description of Contractor's investigation and the status of the investigation;
- e. A description of the types and amount of Confidential Information involved;
- f. Identification of and number of all individuals reasonably believed to be affected, including first and last name of the individual and if applicable, the Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method;
- g. Contractor's initial risk assessment of the Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;
- h. Contractor's recommendation for HHS's approval as to the steps individuals and/or Contractor on behalf of individuals, should take to protect the individuals from potential harm, including

Contractor's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an individual with special capacity or circumstances;

- i. The steps Contractor has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
- j. The steps Contractor has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Breach;
- k. Identify, describe or estimate of the persons, Workforce, Subcontractor, or individuals and any law enforcement that may be involved in the Breach;
- l. A reasonable schedule for Contractor to provide regular updates regarding response to the Breach, but no less than every three (3) business days, or as otherwise directed by HHS in writing, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- m. Any reasonably available, pertinent information, documents or reports related to a Breach that HHS requests following Discovery.

#### **Section 4.04. Investigation, Response and Mitigation.**

- (A) Contractor shall immediately conduct a full and complete investigation, respond to the Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.
- (B) Contractor shall complete or participate in a risk assessment as directed by HHS following a Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) Contractor shall fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, persons and/or individuals about the Breach.
- (D) Contractor shall fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

#### **Section 4.05. Breach Notification to Individuals and Reporting to Authorities.**

- (A) HHS may direct Contractor to provide Breach notification to individuals, regulators or third-parties, as specified by HHS following a Breach.
- (B) Contractor must comply with all applicable legal and regulatory requirements in the time, manner and content of any notification to individuals, regulators or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required by Texas Business and Commerce Code, Chapter 521.053(b) and HIPAA. Notice letters will be in Contractor's name and on Contractor's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of Contractor's representative, an email address and a toll-free telephone number, for the individual to obtain additional information.
- (C) Contractor shall provide HHS with draft notifications for HHS approval prior to distribution and copies of distributed and approved communications.

(D) Contractor shall have the burden of demonstrating to the satisfaction of HHS that any required notification was timely made. If there are delays outside of Contractor's control, Contractor shall provide written documentation to HHS of the reasons for the delay.

(E) If HHS directs Contractor to provide notifications, HHS shall, in the time and manner reasonably requested by Contractor, cooperate and assist with Contractor's information requests in order to make such notifications.

## **ARTICLE 5. GENERAL PROVISIONS**

### **Section 5.01 Ownership of Confidential Information**

Contractor acknowledges and agrees that the Confidential Information is and shall remain the property of HHS. Contractor agrees it acquires no title or rights to the Confidential Information.

### **Section 5.02 HHS Commitment and Obligations**

HHS will not request Contractor to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

### **Section 5.03 HHS Right to Inspection**

At any time upon reasonable notice to Contractor, or if HHS determines that Contractor has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of Contractor to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General, the Office of the Attorney General of Texas, the State Auditor's Office, outside consultants, legal counsel or other designee.

### **Section 5.04 Term; Termination of DUA; Survival**

This DUA will be effective on the date on which Contractor executes the Base Contract and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended, this DUA is extended to run concurrent with the Base Contract.

(A) If HHS determines that Contractor has violated a material term of this DUA; HHS may in its sole discretion:

- (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
- (2) Require Contractor to submit to a corrective action plan, including a plan for monitoring and plan for reporting as HHS may determine necessary to maintain compliance with this DUA; or
- (3) Provide Contractor with a reasonable period to cure the violation as determined by HHS; or
- (4) Terminate the DUA and Base Contract immediately and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to Contractor describing the violation and the action it intends to take.

(B) If neither termination nor cure is feasible, HHS shall report the violation to the applicable regulatory authorities.



(C) The duties of Contractor or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

#### **Section 5.05 Injunctive Relief**

(A) Contractor acknowledges and agrees that HHS may suffer irreparable injury if Contractor or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) Contractor further agrees that monetary damages may be inadequate to compensate HHS for Contractor's or its Subcontractor's failure to comply. Accordingly, Contractor agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

#### **Section 5.06 Indemnification**

Contractor shall indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of HHS' Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party, and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by Contractor or its employees, directors, officers, Subcontractors, or agents or other members of Contractor's Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure. Upon demand, Contractor shall reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including costs of required notices, investigation, and mitigation of a Breach, fines or penalties imposed on an Indemnified Party by a regulatory authority, and reasonable attorneys' fees) which may be imposed upon any Indemnified Party to the extent caused by and which results from the Contractor's failure to meet any of its obligations under this DUA. Contractor's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

#### **Section 5.07 Insurance**

(A) In addition to any insurance required in the Base Contract, at HHS's option, HHS may require Contractor to maintain, at its expense, the special and/or custom first- and third-party insurance coverages, including without limitation data breach, cyber liability, crime theft and notification expense coverages, with policy limits sufficient to cover any liability arising under this DUA, naming the State of Texas, acting through HHS, as an additional named insured and loss payee, with primary and noncontributory status.

(B) Contractor shall provide HHS with written proof that required insurance coverage is in effect at the request of HHS.

#### **Section 5.08 Entirety of the Contract**

This DUA is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

**Section 5.09 Automatic Amendment and Interpretation**

Upon the effective date of any amendment or issuance of additional regulations to any law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or Contractor remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and Contractor to comply with laws applicable to Confidential Information.

**Section 5.10 Notices; Requests for Approval**

All notices and requests for approval related to this DUA must be directed to the HHS Chief Privacy Officer at [privacy@hhsc.state.tx.us](mailto:privacy@hhsc.state.tx.us).

**ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM****HHS CONTRACT NUMBER**  
\_\_\_\_\_

The DUA between HHS and Contractor establishes the permitted and required uses and disclosures of Confidential Information by Contractor.

Contractor has subcontracted with \_\_\_\_\_ (Subcontractor) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. Subcontractor acknowledges, understands and agrees to be bound by the same terms and conditions applicable to Contractor under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. Contractor and Subcontractor agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right, but not the obligation, to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

Contractor and Subcontractor assure HHS that any Breach as defined by the DUA that Subcontractor Discovers shall be reported to HHS by Contractor in the time, manner and content required by the DUA.

If Contractor knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by Subcontractor that constitutes a material breach or violation of the DUA or the Subcontractor's obligations, Contractor shall:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with Subcontractor, if feasible;
3. Notify HHS immediately upon Discovery of the pattern of activity or practice of Subcontractor that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps Contractor is taking to cure or end the violation or terminate Subcontractor's contract or arrangement.

**This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.**

**CONTRACTOR****SUBCONTRACTOR****BY:** \_\_\_\_\_**BY:** \_\_\_\_\_**NAME:** \_\_\_\_\_**NAME:** \_\_\_\_\_**TITLE:** \_\_\_\_\_**TITLE:** \_\_\_\_\_**DATE** \_\_\_\_\_, **201** .**DATE:** \_\_\_\_\_

**ATTACHMENT G**

**FEDERAL ASSURANCES – NON-CONSTRUCTION**

Unofficial copy Travis Co. District Clerk Velda L. Price

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

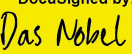
**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VII of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Prevention and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §1701) EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL DocuSigned by:  BDC07FA4CE424B1	TITLE Chief Executive Officer
APPLICANT ORGANIZATION MTX Group Inc	DATE SUBMITTED May 13, 2020

**ATTACHMENT H**

**FEDERAL LOBBYING CERTIFICATE**

Unofficial copy Travis Co. District Clerk Velda L. Price

**CERTIFICATION REGARDING LOBBYING**

## Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**\* APPLICANT'S ORGANIZATION**

[Redacted]

**\* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE**

Prefix: [Redacted] First Name: [Redacted] Middle Name: [Redacted]

\* Last Name: [Redacted] Suffix: [Redacted]

\* Title: [Redacted]

**\* SIGNATURE:**

[Redacted]

**\* DATE:**

[Redacted]



**ATTACHMENT I**

**MTX GROUP, INC SOLICITATION RESPONSE**

Unofficial copy Travis Co. District Clerk Velda L. Price



## STATE OF TEXAS

STATEMENT OF WORK FOR  
CONTACT TRACING PROGRAM,  
WORKFORCE AND CALL  
CENTER TECHNOLOGY

**AN EXPERIENCED  
GUIDE WHO KNOWS  
YOUR TERRAIN**

### **MTX GROUP INC.**

Chad Leeper  
chad.leeper@mtxb2b.com  
liam.bowley@mtxb2b.com  
469.236.4743  
www.MTXB2B.com

3001 Dallas Pkwy  
Suite 210  
Frisco, TX 75034



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Texas Department of State  
Health Services

## Executive Summary

The MTX team is pleased to submit the following proposal to the Texas Department of State Health Services (DSHS). MTX is currently providing the same contact tracing and call center solution in New York City where the Department of Health will be adding 15,000 call center agents in order to slow the spread of the virus. We are very confident in our ability to provide this solution to the State of Texas and we look forward to moving this initiative forward as quickly as possible.



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**Strategic Partnership**

Our proposal details the technical approach, resource and operations model, guiding principles, team members and references that demonstrate MTX's ability to deliver a quality solution on time and on budget.

MTX has successfully implemented similar COVID-19 Response Systems (including Contact Tracing) and Call Center platforms in several states and large cities across the United States including New York, Florida, Oklahoma, Chicago, Colorado, New Mexico, Georgia, DC, Ohio, Massachusetts, Vermont, & New Hampshire, and we are very excited for the opportunity to do the same in the state of Texas. Our dedicated project team, detailed below, will bring extensive experience in both Salesforce implementations and more specifically, Contact Tracing Programs.

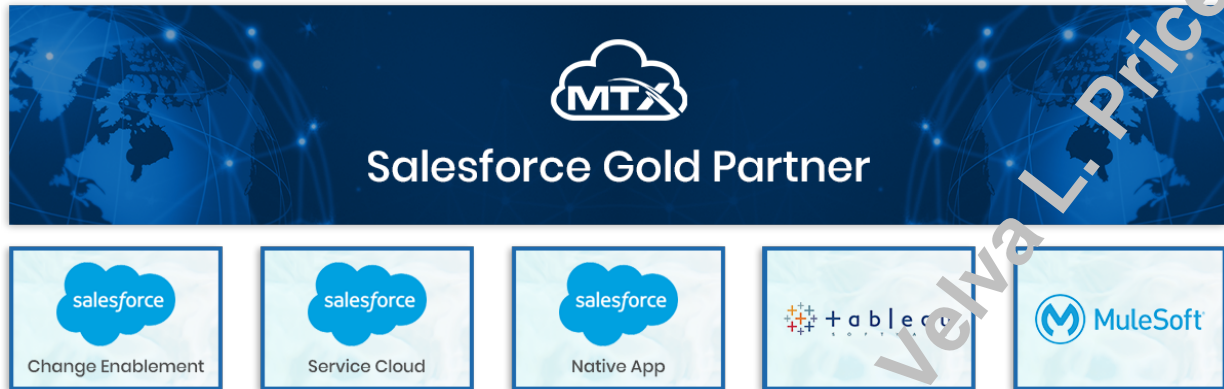
### MTX brings Texas Department of State Health Services (DSHS) key advantages for this implementation

- ✓ Speed To Market (base platform live in 7-10 days)
- ✓ Significant Experience with Contact Tracing Programs
- ✓ Significant Experience with COVID-19 & Emergency Response Management
- ✓ Engaged with 17 states on ERM & Contact Tracing
- ✓ Experience with referential Contact Tracing & Proximity Tracing (mobile app)
- ✓ Large Call Center Experience
- ✓ Salesforce Experts



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When successfully implemented, TX DSHS' Platform will have considerable, long-lasting, and far-reaching impacts. MTX is pleased to offer its skill, experience, and resources to support the rapid implementation of systems, processes, and workforce development that will result in mitigating the spread of COVID-19 in Texas.



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## Our Understanding of Your Project Requirements

On April 27, 2020, the Governor announced that the State of Texas will implement a statewide contact tracing program to help identify and mitigate the spread of COVID-19. In support of the Open Texas Plan, the Texas Department of State Health Services (DSHS) is seeking a vendor to propose additional elements of the multi-pronged approach to support these efforts by training, deploying, and managing thousands of contact tracers who will call people who have been in close contact with COVID-19 patients. This work will be combined with the state's initiatives to increase testing, effectively manage outbreaks, and provide support to people in quarantine/isolation to contain the spread of COVID-19.

### Requirements Overview:

- Rapid GoLive (7-10 days) for COVID-19 Response Call Center & Contact Tracing Platform extension
- Innovative Call Center technologies including IVP, Knowledge Bots, & Intelli-Channel Case Management
- Onboarding, training, and management of up to 5,000 call center members
- Contact Tracing (Extensions to current solution)
- Test Management & Scheduling; includes QR codes & Barcode scanning
- Ongoing Change Enablement & Training
- Ongoing Managed Services & Support

## Our Approach to Addressing Your Needs

MTX brings unmatched experience with COVID-19 Contact Tracing, Call Center Technology platforms, and workforce development to provide Texas with a one stop provider for the most innovative and effective Contact Tracing program in the nation.

## Successful Projects Similar to Yours

COVID-19 Contact Tracing is a relatively new but terribly important program and endeavor brought on by the recent pandemic. MTX has been engaged with state and local governments from day 1 addressing this dynamic challenge.

As mentioned above, MTX is currently providing the same contact tracing and call center solution in New York City where the Department of Health will be adding 15,000 call center agents in order to slow the spread of the virus.





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When Chicago started their Contact Tracing Program with MTX, they were able to identify 671 people who were symptomatic in the first 24 hours.

Other MTX ERM and Contact Tracing Programs include..



MTX is working daily with federal, state, and local governments, as well as higher education institutions to design, implement, and execute Contact Tracing Programs.



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## A. Mobilization and Operation of a Texas Health Contact Tracer Workforce

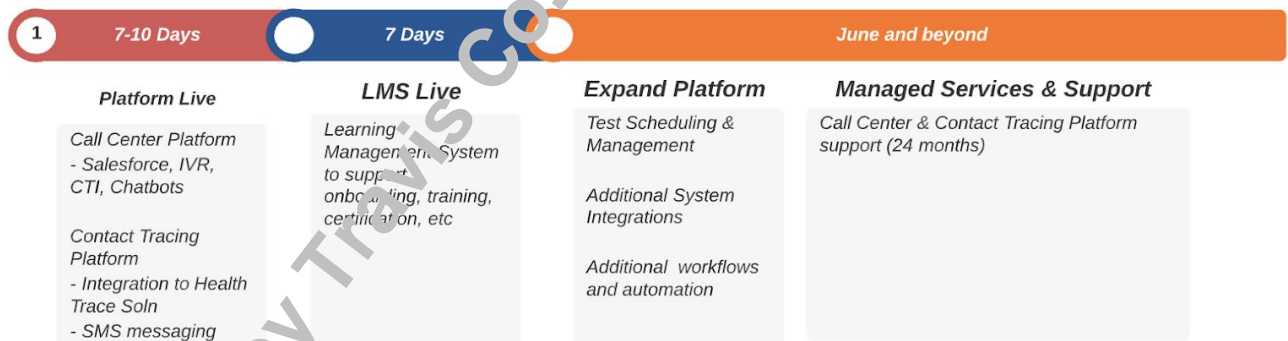
### A.1.1 Program and Operations Management

Present a proposed schedule from roll-out to full operations

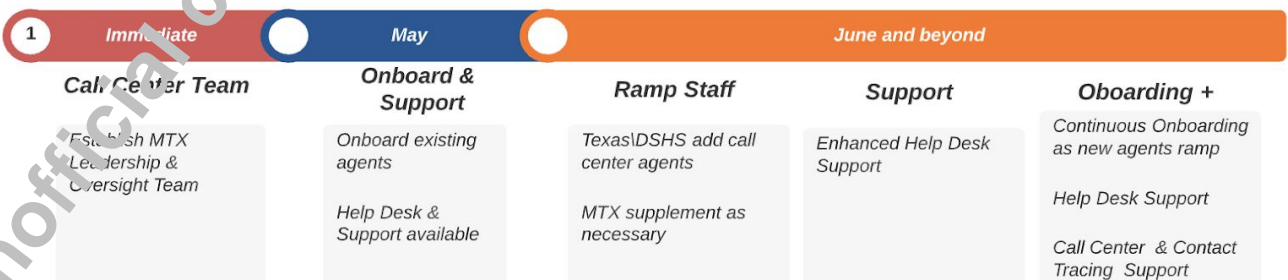
MTX anticipates standing up the call center and contact tracing platform in 7-10 days. Call Center personnel will be trained and fully operational in approx. 2 weeks. Additional ramping and onboarding will start immediately.

### Rapid Rollout, Deployment, & Ramp "MTX is Speed To Market"

#### Technology & Platforms



#### Workforce Development & Onboarding







Mobilization services to set up processes and procedures to support groups of resources during roll-on

- Infrastructure development and processes for onboarding
- Staffing approaches to coordinate multiple workforces and drive highest value
- Workforce management solution development

Independent of the call center resources (tracers, case investigators, supervisors, and epidemiologists) MTX will establish the following Call Center Leadership and Oversight Team immediately\* to lead and support the call center:

MTX Call Center Leadership & Oversight	
Resources & Services - Phase 1 Team	Qty
Program Manager	1
Call Center Director	1
Call Center Managers	2
Help Desk & Tier2, Tier3 Support Team	4
Ongoing Onboarding Team	1
HR Leader	1

\* The need to ramp up Managers and Support Team will depend on call center staffing ramp needs and the mix between state provided and MTX sourced agents.

The above resource quantities are based on MTX industry experience and assumptions based on information available. If call center volumes and performance dictate additional oversight team members, MTX and DSHS to evaluate.

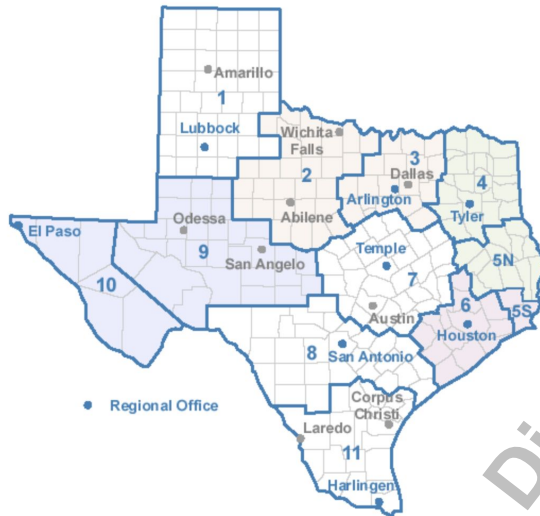
Additional details and estimated costs found in Appendix B and the Cost Proposal xls.



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To the extent possible, MTX will build teams, governance, and leadership around Texas counties and geographies with the goal of utilizing resources and call center members with familiarity to local areas. The on-boarding and supervision of the call center agents can be based on the various regions of Texas based on more prominent needs for contact tracing



- Workforce Management
- Daily team management and cadence
- Workforce management tool
- Capacity/demand modeling for various operational schedules
- Resource scheduling

#### Workforce Management:

- All call center governance and management will be provided by MTX
- All call center agent candidates will be screened by MTX as a "hiring process"
- All agents will be trained both on the operational process and the call center management software
- Call center agents will be available to the public 12 hours per day (8am - 8pm CT)
- Agents' performance will be tracked daily by their respective team lead. Team leads will hold daily standups with call center agents at the beginning of each shift.
- Two levels of agent skill; Level one for general contact tracing and level 2 for more specialty situational management
- Assumption is approximately 80% of calls will be outbound



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- Estimated call time is estimated to be 10 minutes per call. Fast followup calls may be less (5 minutes or less) while calls around symptom development and Testing results may be longer (15 minutes).
- For Quality assurance each call will be recorded for training purposes
- Each agent upon onboarding will be trained both on the operational process and the call center management software

#### Resource Scheduling:

- Call center agents will be available to the public 12 hours per day (8am - 8pm CT)
- Schedules of call center agents will overlap in peak hours of the traditional work day, schedules will be subject to change based on emerging call trends etc.
- MTX will use call center metrics to optimize schedules to meet peak demands

#### Operations Performance Metrics

- Gathering and reporting of operational metrics
- Service level reporting

Agent and Team lead Dashboards will be available to both the agent and their respective managers, tracking:

- Call Volume
- Handle Time
- Abandonment Rate
- Average wait time for calls in their queue
- Call duration
- Frequency of calls to be escalated to a level two agent for resolution
- Inbound Call Hold Time
- More

Call center operations will be very metric and performance driven; using dashboards, visualizations, and reports to drive behavior and support key operational decisions.



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## A.1.2 Program Organization and Workforce

Operate and staff a virtual call center from 8 am Central Standard Time to 8 pm Central Standard Time 7 days a week.

Yes. Remote agents will be available 8am CT to 8pm CT, 7 days per week.

Contact Tracing and Call Center platforms will be available 24x7.

Hire and train management staff to onboard, train, and oversee up to 5000 paid case investigators and contact tracers. Up to 750 HHS System employees have volunteered to participate in the contact tracing effort. They will be paid solely by the agency by which they are employed but will be supervised and managed with respect to contact tracing by the Vendor hired under this solicitation. The Vendor's cost proposal should not include any payment to HHS System employees participating in contact tracing. Growth in the numbers of investigators and tracers would be based on demand.

MTX will onboard, train, supervise and manage all investigators and contact tracers regardless of source. Contact Tracing and Call Center platforms will be available to all 5000 investigators or tracers regardless of source.

MTX's proposal does not include any costs associated with paying HHS System employees that have volunteered to participate.

MTX can source up to 1,000 call center agents every 2 weeks.

The proposed agent ramp is defined below and can be a combination of MTX sourced agents and Texas provided agents.

Month 1 = 1,000

Month 2 = 2,000

Month 3 = 3,000

Month 4 = 3,500

Month 5 = 4,000

Month 6 = 4,500

Month 7 - Month 24 = 4,500\*

\*MTX can source well beyond 5,000 agents if required. The model currently proposes 4,500 as MTX believes our call center and contact tracing platform can help reduce agent requirements.



Hire and train supervisors with virtual call center experience to manage epidemiology, case investigator, and contact tracer staff. See attached job description for responsibilities and qualifications.

DSHS and the state of Texas plan to provide as many call center members (including supervisors) as possible. As needed, MTX has the ability to supplement resources via the following methods:

1. Direct Hiring (contractors)
2. Target Furloughed workforces
3. Outsourcing
4. Business Partners
5. Service Management Partners

MTX will provide training to all call center members as needed.

Hire and train epidemiologists to provide contact tracing subject matter expertise and serve as an escalation resource for case investigators and contact tracers. See attached job description for responsibilities and qualifications.

DSHS and the state of Texas plan to provide as many call center members (including epidemiologists) as possible. As needed, MTX has the ability to supplement resources via the following methods:

1. Direct Hiring (contractors)
2. Target Furloughed workforces
3. Outsourcing
4. Business Partners
5. Service Management Partners

MTX will provide training to all call center members as needed.

Hire and train case investigators and contact tracing to contact individuals with a lab-confirmed positive COVID-19 diagnosis and their close contacts who were potentially exposed. See attached job description for responsibilities and qualifications.



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DSHS and the state of Texas plan to provide as many call center members (including cse investigators and contact tracers ) as possible. As needed, MTX has the ability to supplement resources via the following methods:

1. Direct Hiring (contractors)
2. Target Furloughed workforces
3. Outsourcing
4. Business Partners
5. Service Management Partners

MTX will provide training to all call center members as needed.

All recruited staff must have an adequate remote workspace and must meet minimum technical requirements which include but are not limited to possessing their own computing devices and peripherals including headsets and have access to the internet. HHSC is not responsible for equipment, telephone lines (installation, monthly fees or long-distance changes), or high-speed Internet access in a contact tracer's residence. HHSC will provide access to the Texas Health Trace application through Texas.gov.

Agreed. All recruited staff will need access to the appropriate Contact Tracing and Call Center solutions but HHSC is not expected to provide any equipment, internet access, etc.

Locating and onboarding supplemental contact tracing workforce.

- Vet, hire and onboard staff to supplement the volunteer and/or paid workforce. Includes sourcing, conducting background checks, and training staff for their duties.
- US Based workforce is required; sourcing individuals within Texas is preferred.

DSHS and the state of Texas plan to provide as many call center members as possible. As needed, MTX has the ability to supplement resources via the following methods:

1. Direct Hiring (contractors)
2. Target Furloughed workforces
3. Outsourcing
4. Business Partners
5. Service Management Partners

MTX will provide training to all call center members as needed.

MTX will screen all applicants and require background checks for any call center members sourced by MTX.



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MTX assumes Texas\DSHS has already vetted volunteers or paid workforce introduced to the call center.

Unofficial copy Travis Co. District Clerk Velda L. Price



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### A.1.3 Program Training and Quality Assurance

Provide a learning management platform to house training materials, track agents' completion of all required training, and provide a means for team communication.

MTX has a Learning Management System (LMS) solution that will be deployed to help onboard all call center agents and personnel.

The LMS will house training materials, control content/training assignments, and track progress and completion.

The LMS is built in Salesforce and includes standard tools and processes to communicate to learners, supervisors, teams, etc.

LMS content will be customized specific to call center role and responsibilities (eg. Contact Tracer vs. Supervisor).

Use existing DSHS/Contractor Texas Health Trace application training, DSHS contact tracing processes, HHS Security training and call center training to schedule virtual training classes and document completion.

Existing training materials above will be incorporated into standard onboarding processes and requirements. As possible, these assets will be incorporated into the LMS in order to manage and track training and onboarding in one location.

Develop and revise standard operating procedures associated with the call center.

Standard operating procedures (SOPs) will be documented and available electronically to all personnel.

As possible, SOPs will be built into agent workflows and automated in order to drive compliance and efficiencies.

SOP measures and metrics will be built into standard dashboards to drive behavior.





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Develop and revise training demonstrating how to use the call center solution.

MTX's scope and Change Enablement services includes the development of videos, guides, and tools that train and demonstrate how to use the call center solutions.

See Appendix A for more details.

Provide virtual, live Train the Trainer sessions, 3 each for both agents and supervisors and as needed to maintain adequate training resources.

MTX's scope and Change Enablement services include virtual and Train the Trainer sessions for agents and supervisors.

See Appendix A for more details.

Assess and validate readiness of tracers to transition from training to operations.

MTX's Learning Management System will be utilized to certify and validate readiness for tracers to move from training to operations.

Hire, train and supervise experienced call center staff to perform quality checks, provide feedback to tracers, and quality reporting

As needed, to supplement DSHS and state of Texas hires, MTX will provide supplemental experienced call center members to perform quality checks, provide feedback to tracers, and quality reporting



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#### A.1.4 Help Desk for Contact Tracers

Provide first line support to contact tracers for general COVID related questions, technical questions and functional questions as agreed upon by DSHS.

Yes. MTX will provide first line support to contact tracers. Digital and self help services and technologies will be made available for speed and efficiency; however, additional support options will also be available if needed.

Provide Tier 1 Texas Health Trace application and navigation support; Tier 2 and 3 provided by Texas.gov

Yes. MTX to provide Tier1 support for the Texas Health Trace application (built on Salesforce).

Provide Tier 1, Tier 2 and Tier 3 Help Desk services for call center support

Yes. MTX provides Tier 1, Tier 2, and Tier 3 support services for all center support.

#### Tiered Level Support (example)

Tier Level	Description	Responsibilities
Tier-1	The front-line support team responsible for triaging tickets and typically resolve most common inquiries and issues. This team is responsible for resolving a significant percent of issues without escalation to other support groups and is typically measured by KPIs such as First Contact Resolution rate (FCR), percentage of issues resolved at level 1, average response time, and customer satisfaction.	Responsible for monitoring, triaging, remediating and directing inquiries / issues to the appropriate queues for resolution.
Tier-2	Experienced and knowledgeable technicians assess issues and provide solutions for problems that cannot be handled by tier 1.  If no solution is available, tier 2 support escalates the incident to tier 3.	Responsible for technical issues and remediation. MTX Team may invoke the Salesforce technical team for platform related issues.



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Tier-3	<p>Access to the highest technical resources or subject matter experts available for problem resolution or new feature creation.</p> <p>Tier 3 technicians attempt to duplicate problems and define root causes, using product designs, code, or specifications.</p> <p>Once a cause is identified, the company decides whether to create a new fix, depending on the cause of the problem. New fixes are documented for use by Tier 1 and Tier 2 personnel.</p>	<p>Responsible for critical technical issues impacting the call center and/or contact tracing platforms.</p> <p>Salesforce will deal with critical platform or systems issues associated with the Salesforce platform under the terms of their premier support.</p>
--------	--	---

Provide Tier 1 end user workstation technology support.

Yes. MTX will provide Tier 1 end user technology support for the Department of State Health Services specific to the call center platform.

Help Desk Service hours from 8 am to 8 pm 7 days a week.

Yes. Help Desk Services will be available from 8am CT to 8pm CT, 7 days a week.



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## B.Texas Health Trace Call Center Technology

### B.1.1 Call Center Telephony Platform

Digitally enabled contact center platform for up to 5000 agents.

MTX will deploy the following technology platform, solutions, and capabilities to enable and enhance contract tracing and call center operations. Additional details can be found in Appendix A.

Solution	Description\Use
Salesforce.com Platform	<ul style="list-style-type: none"> <li>All solutions will be built on or integrate to the existing DSHS Salesforce platform</li> <li>Supports distributed call centers and scales well beyond 5,000 agents.</li> </ul>
Call Center/Case Management	<ul style="list-style-type: none"> <li>Implementation of: <ul style="list-style-type: none"> <li>Case Management Platform</li> <li>Knowledge Base Bot</li> <li>Call Center with Telephony System/IVR</li> <li>Analytics and dashboards</li> </ul> </li> </ul>
Contact Tracing Platform <i>(work in conjunction with Texas Health Trace solution)</i>	<ul style="list-style-type: none"> <li>Pre-Built and configurable MTX solution</li> <li>Implementation of: <ul style="list-style-type: none"> <li>Required integrations with existing Texas Health Trace</li> <li>Contact Tracing Platform</li> <li>Uses HIPAA compliant notification procedures</li> <li>Analytics and dashboards</li> </ul> </li> </ul>
Disease Monitoring & Control Application	<ul style="list-style-type: none"> <li>Pre-Built and configurable MTX solution</li> <li>Implementation of base product: <ul style="list-style-type: none"> <li>Monitoring Intake Form</li> <li>Messaging &amp; Monitoring System</li> <li>Uses HIPAA compliant notification procedures</li> </ul> </li> </ul>



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	<ul style="list-style-type: none"> <li>○ Analytics and dashboards</li> </ul>
Schedule & Test Center Management	<ul style="list-style-type: none"> <li>● Pre-Built and configurable MTX solution</li> <li>● Implementation of:               <ul style="list-style-type: none"> <li>○ Antibody &amp; COVID-19 Test Registration Enrollment Form</li> <li>○ Appointment availability by locations and scheduling</li> <li>○ Confirmations/Notifications of appointments</li> <li>○ Mobile QR for easy scan</li> <li>○ Map layer of locations and dataset</li> </ul> </li> </ul>
SMS Messaging Services	<ul style="list-style-type: none"> <li>● Pre-Built and configurable capability within MTX solutions and Salesforce platform</li> <li>● Implementation of SMS Notification</li> </ul>
Interactive Voice Response (IVR)	<ul style="list-style-type: none"> <li>● MTX recommending Twilio based on capabilities and pricing</li> </ul>
Computer Telephony Integration (CTI)	<ul style="list-style-type: none"> <li>● MTX Recommending Twilio Flex (CTI to integrate with Salesforce console)</li> </ul>
Learning Management System	<ul style="list-style-type: none"> <li>● Pre-Built and configurable MTX solution</li> <li>● Deployed to support onboarding and training of call center agents and personnel</li> <li>● Includes standard team and user communication capabilities</li> </ul>

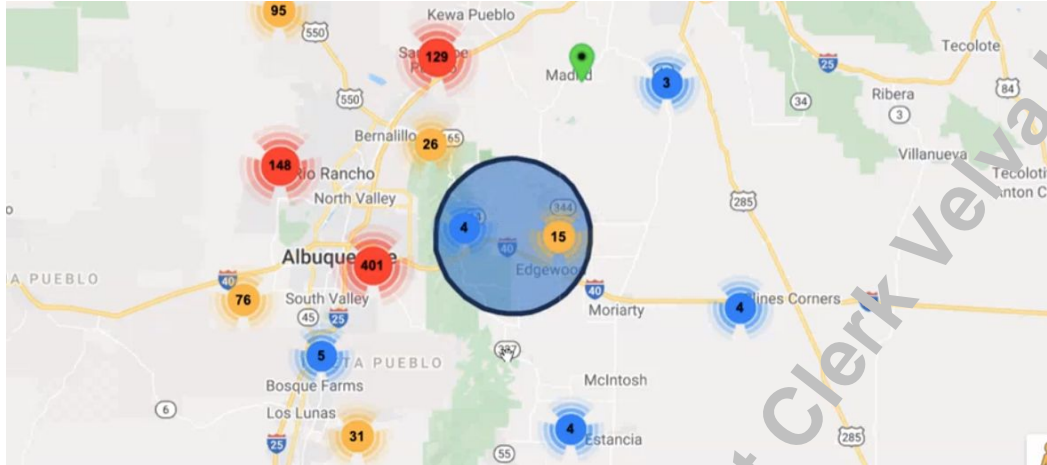


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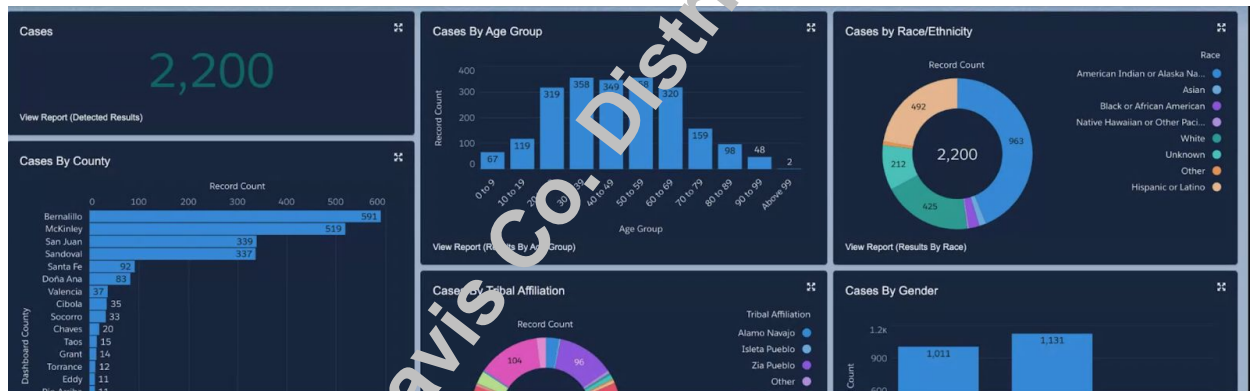
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Sample Screenshots of the solution available below.

Contact tracing visualization from the system



Analytics capabilities: Note- Data is sample data only



Contact Tracing Call Center Screens:



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4 items - Sorted by Interaction Date/Time - Filtered by Exposed Contact Queue - Updated 2 hours ago

Interaction No...	Status	Interaction Date/Time	Name	Showing Sym...	Taking Medic...	SMS Consent	Recommend...	Record Type
1-000486	Pending	4/23/2020, 12:56 PM	Connie Armstrong					Exposed Contact Initial Interaction
1-000485	Pending	4/23/2020, 12:51 PM	Alex Phillips					Exposed Contact Follow Up Interaction
1-000480	Pending	4/23/2020, 12:25 PM	Brian Thomas					Exposed Contact Initial Interaction
1-000482	Pending	4/23/2020, 12:24 PM	Sierra Thomas					Exposed Contact Initial Interaction

Omni-Channel

Online

New (1) My work (0)

Sierra Thomas

Exposed Contact Initial Interaction (111) 222-3333  
2 h 30 min 40 s

Details Related **Family Members**

There are additional exposed contacts identified that can be updated with the same information. Select the contacts below to update.

Note To DIS: Confirm with the exposed contact that the update applies to any of the below exposed contacts.

INTERACTION #	FIRST NAME	LAST NAME	PHONE	INTERACTION DATE/TIME
1-000480	Brian	Thomas	(111) 222-3333	4/23/2020 12:25 PM
1-000481	Sydney	Thomas	(111) 222-3333	04/23/2020 12:22 PM

4 items - Sorted by Interaction Date/Time - Filtered by Exposed Contact Queue - Updated 2 hours ago

Interaction No...	Status	Interaction Date/Time	Name	Showing Sym...	Taking Medic...	SMS Consent	Recommend...	Record Type
1-000480	Reached	4/23/2020, 2:59 PM	Brian Thomas					Exposed Contact Initial Interaction
1-000488	Pending	4/23/2020, 2:49 PM	Sierra Sacks					Exposed Contact Initial Interaction
1-000487	Pending	4/23/2020, 2:47 PM	Brian Sacks					Exposed Contact Initial Interaction
1-000486	Pending	4/23/2020, 12:56 PM	Connie Armstrong					Exposed Contact Initial Interaction
1-000485	Pending	4/23/2020, 12:51 PM	Alex Phillips					Exposed Contact Follow Up Interaction
1-000481	Pending	4/23/2020, 12:22 PM	Sydney Thomas					Exposed Contact Initial Interaction

Details Related **Family Members**

Information

Interaction Number: 1-000485

Status: Reached

Status Reason: Alleged COVID Positive

Interaction Date/Time: 4/23/2020

Owner: Das Nobel

Record Type: Exposed Contact Follow Up Interaction

Monitoring End Date: 5/7/2020

Call Back Date/Time: Date Time

Birthdate: 4/1/2020

Exposed Contact Information

Name: Alleged COVID Positive

Confirmed COVID Positive

Test Management: Online Scheduling Capabilities



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Dashboard
Appointments
Manage Slots

**Mercy Hospital Oklahoma City**  
4300 West Memorial Road  
Oklahoma City, OK 73120

\* Start Time  
8:00 AM

\* End Time  
5:00 PM

Save

TO BE SCHEDULED  
4

SCHEDULED  
7

PENDING  
0

COMPLETED  
7

CLOSED  
0

CANCELLED  
1

**NEWS**  
**Oklahoma's Health Response to COVID-19**  
COVID-19 is a virus identified as the cause of an outbreak of respiratory illness first detected in Wuhan City, Hubei Province, China in 2019 and has since spread globally into a pandemic.  
[Read more →](#)

**IMPORTANT LINKS**  
[Oklahoma COVID-19 Resources →](#)  
[Serology Testing for COVID-19 →](#)  
[Oklahoma Coronavirus Statistics →](#)

Consent
Personal Information
Symptoms
Prior Exposure
**Appointment Preference**

**Appointment Preference**  
Please see your details and edit them, in case you want to change your preferred slot.

**Location details**  
Mercy Hospital Oklahoma City  
4300 West Memorial Road  
Oklahoma City, OK 73120  
[View map](#)

Pick Location

Preferred Date  
Apr 23, 2020

Preferred Time  
8:15 AM

Back Submit





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Dashboard | Appointments | Manage Slots

Scheduled Appointments | **Unscheduled Appointments** | Eligible Appointments

Show 10 entries

Search Appointment...

PATIENT NAME	DOB	PATIENT ID	PREFERRED DATE	PREFERRED TIME	ACTION
Braden Jones	1983-04-20	P-00114	2020-04-23	08:30 AM	<a href="#">Schedule</a>
Aimee Landon	1985-04-24	P-00117	2020-04-24	07:30 AM	<a href="#">Schedule</a>
Stevie Johnson	1982-01-03	P-00118	2020-04-24	07:30 AM	<a href="#">Schedule</a>

Showing 1 to 3 of 3 entries

Previous | 1 | Next

Dashboard | Appointments | Manage Slots

**Create Appointment Slots**

Available Selected

\* Number of Available Appointment Slots (Per 30 min)

1

	FRI 04/24	SAT 04/25	SUN 04/26	MON 04/27	TUE 04/28	WED 04/29	THU 04/30
08:00 AM	Available (4) Booked (1)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)
08:30 AM	Available (5) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)
09:00 AM	Available (5) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)
09:30 AM	Available (4) Booked (1)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)
10:00 AM	Available (5) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)
10:30 AM	Available (5) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)	Available (0) Booked (0)

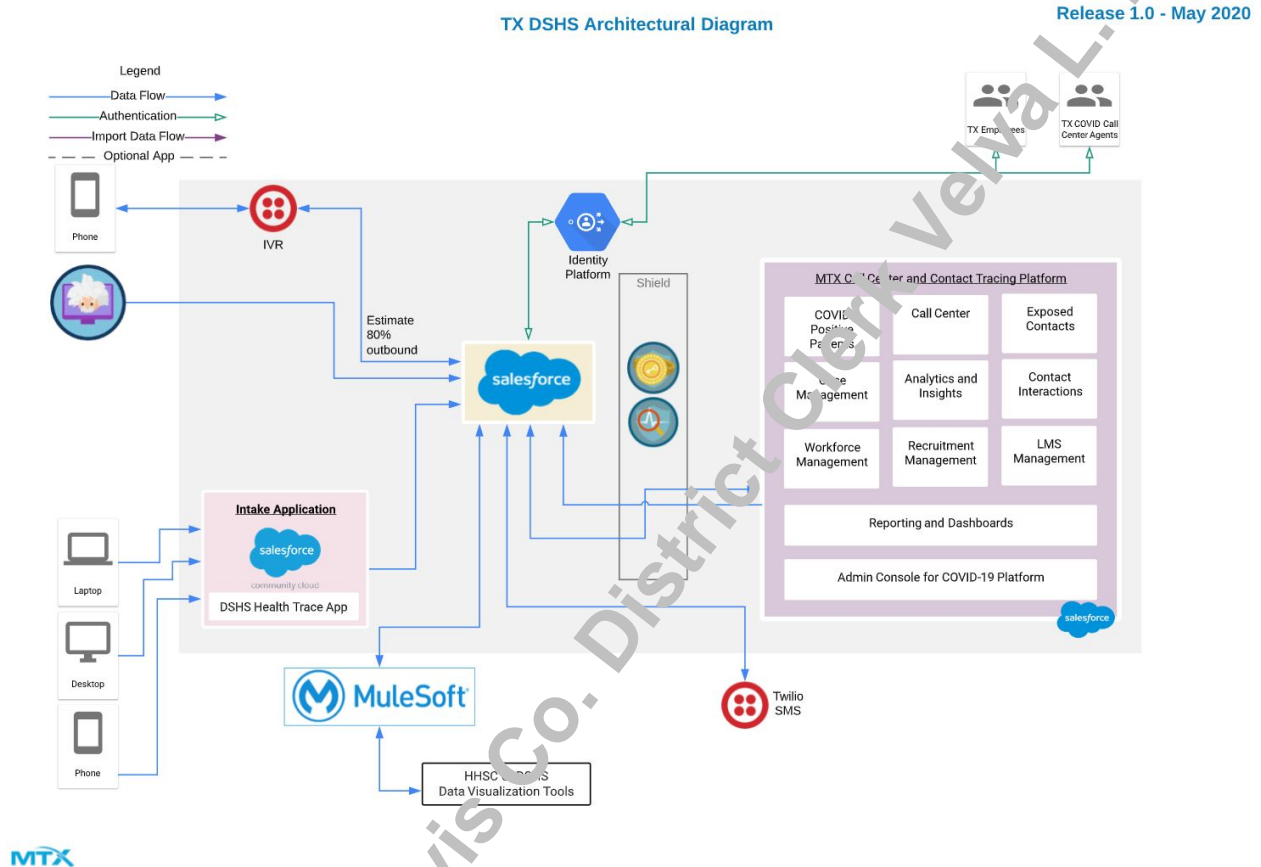
Save



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The diagram below displays the proposed call center platform and architecture.



Provision 1000 work from home agents by May 11, 2020 with a steadily expanding number of agents up to 5000 agents by June 15, 2020.

This call center platform will support connectivity for work from home agents in disparate locations.

The platform is designed to scale so performance will not be impacted by the number of agents and/or the actual ramp schedule.



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Contact Center will be able to support 12x7 operations, including remote workers telecommuting using their personal device, mobile phones, complex call routing, outbound dialing and other needs.

Yes, these are all standard capabilities available via the Salesforce platform and IVR technology.

URL based login for agents with no requirement for VPN or software.

TX DSHS users will have the ability to log into the Salesforce system through a URL using any compatible browser.

Salesforce is a multi-tenant, cloud-based web application. No additional software or infrastructure is required. Salesforce hosts the entire solution, thus freeing up your organization to manage its mission, not manage an infrastructure solution. Additionally, Salesforce is browser agnostic and supports all major browsers (Firefox, Chrome, Safari, IE). No installations on users' laptops or desktops are required and thus the solution is accessible from anywhere an internet connection and supported browser are available, including mobile devices.

2-way text capabilities (SMS) that can be integrated with the DSHS Texas Health Trace System.

MTX and Salesforce both support 2-way text capabilities (SMS). MTX ERM platform/solutions support 2-way text capabilities.

Twilio platform also includes SMS capability (see IVR section below)

Interaction recording capabilities enabled.

Standard capability of IVR solution.

Call recording and storage of recording for 12 months.



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The IVR solution enables and stores call recordings.

Call-back request capabilities enabled.

Standard capability of IVR solution.

Web chat to communicate in real-time using easily accessible web interfaces.

Web chat can be enabled as part of the intelligent case management system.

Ability to add hold time messaging; scripting provided by DSHS.

Standard capability of IVR solution.

Toll Free number (toll charges included).

MTX to work with Texas to incorporate any existing 800#s and desired action prompts into the new call center solution.

Customized outbound caller ID (TX DSHS and 800#).

See answer above.

Interactive Voice Response System (IVR) supporting both English and Spanish (additional options as needed).

IVR system will be setup to route to the appropriate agents based on language preferences.



MTX and the Salesforce platform can work with many different IVR vendors. Based on costs and capabilities, MTX is recommending Twilio (<https://www.twilio.com/>)

Capability	Supported
OmniChannel Routing	Yes
Inbound Phone	Yes
Warm Transfer	Yes
Conferencing	Yes
Outbound Phone	Yes
IVR	Yes
Natural Language Parsing	Yes
Call Recording	Yes
Messaging	Yes
SMS	Yes
Short Codes	Yes
Chatbot	Yes
Salesforce Integration	Yes, included
CTI Screenpop	Yes
Workforce Management	Optional Add-On
Forecasting	Optional Add-On
Call Reporting	Yes

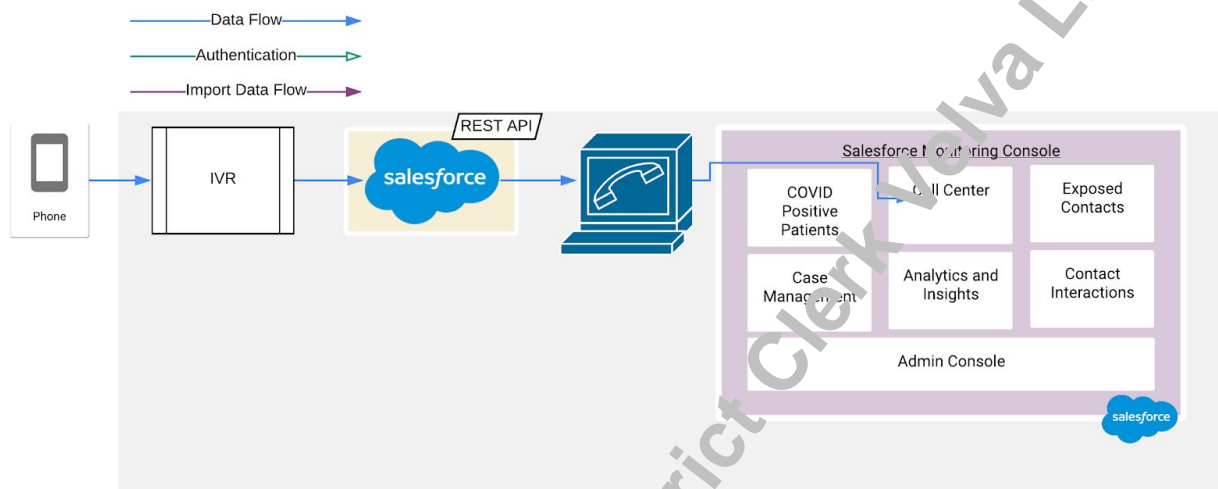


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## IVR Architecture Overview

The visual overview states how we implement the proposed solution along with the core components of the system.



Interactive Voice Response (IVR) is a telephony menu system that enables the dial pad for identification, segmentation and routing of callers to the most appropriate agent within the team. It is simple and effective and will significantly reduce costs and increase efficiency within any company.

- Collect Information about Callers
  - Be able to pre-populate data before the agent takes the call
  - Decreases the time taken and human error for information capture
- Automate Customer Support
  - Allow customers to solve their own problems
  - Most information needed does not need an agent
- Efficiently Route Callers to Appropriate Agents/Departments
  - No bouncing around between agents and departments
  - Prioritize calls based on caller's value
- Thrive with High Call Volumes
  - Prevent frustrating busy signals and/or long wait queues



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- Allows the caller the option of having an agent return their call rather than wait in a queue
- Benefits include:
  - Cost savings due to automated customer service
  - Efficiently route calls to the appropriate department
  - IVR experience is less frustrating than busy signals and being on hold

DSHS will provide approved scripts for outbound call tracer phone calls.

Approved scripts to be built into case management platform, workflows, and onboarding.

Describe minimum workstation and bandwidth requirements for users of the call center system.

The minimum requirements that your workstation are as follows:

- Intel Core 2 Duo CPU 2.6 GHz, or similar with at least two cores
- At least 5 GB of RAM
- Download speed of 1 Mbps or greater
- Microsoft® Internet Explorer®, Mozilla® Firefox®, Apple® Safari®, or Google Chrome™ on Mac, Linux, or Windows machines

## B.1.2 Reporting, Service Levels and Integration

Integration with DSHS Texas Health Trace system or other software integration.

MTX will integrate the MTX ERM solutions, case management, and call center technologies with the existing DSHS Texas Health Trace system and workflows.

This will be a very natural and tight integration as all solutions above will be on or already connected to the Salesforce platform. Note: All MTX ERM Solutions are built on the Salesforce platform.



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MTX has included services to support integration requirements for up to 4 additional DSHS or Texas systems.

Real time and historical reporting for service levels, call volume, handle time, and abandonment rate on an hourly, daily, weekly, monthly levels.

- Industry level service level of 80% in 20 seconds
- Industry level abandonment rate of <8%
- Industry level service up time 99.999%

MTX will use standard Salesforce reports and dashboards as well as create custom dashboards and data visualizations to report on these items.

MTX will develop views that are specific to agents, regions, supervisors, etc as needed.

These reports will offer realtime and historical views of these critical measures and other operational metrics.

Salesforce has maintained high levels of availability across all Salesforce instances since inception. As the only on-demand vendor to provide daily service-quality data on a public Web site (<http://trust.salesforce.com>), Salesforce proves that we are the leader in availability. And by making its track record completely transparent, Salesforce proves we are worthy of our customers' trust. To ensure maximum uptime and continuous availability, Salesforce provides the best redundant data protection and most advanced facilities protection available, along with a complete data recovery plan—all without affecting performance.

Adhoc reporting capabilities.

The Salesforce platform offers extensive ad hoc reporting, dashboard, and analytics capabilities standard, out of the box.

MTX ERM Solutions offer pre-built reports and analytics as well as ad hoc reporting capabilities.

MTX fully expects to build reports and dashboards to support call center operations and the contact tracing program.





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Ability to transfer data into data visualization tool hosted by HHSC or DSHS.

Data visualization tools can either be used directly with the Salesforce platform or data can easily be transferred to existing HHSC or DSHS visualization tools via multiple options including exports, ETL, direct integrations, etc.

If required, MTX has included services to support integration requirements for up to 4 additional DSHS, HHSC, or Texas systems.

## C.Pricing

Vendors shall provide pricing in the Excel Cost Proposal. Vendors will provide One Time and Monthly Recurring costs. Vendor shall add to the Cost Proposal pricing for any optional services proposed by the Vendor.

Please find our completed Cost Proposal (in Excel format) attached with this submission.



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## Appendix A - Call Center & Contact Tracing Platform - Details

### Solution Feature Set and Delivery Scope

The current solution features delivered by MTX are clarified below. As new enhancement features are identified, they will be scoped, prioritized and agreed upon between MTX and the client through an additional statement of work with the agreed rate schedule as defined in this document.

MTX will implement a web-based technology solution in the Salesforce platform that includes the following baseline features. MTX will provide warranty support as well as a support and maintenance scope of services identified below.

### Persona Definitions (standard Contact Tracing personas)

Persona	Description
PUI (Person Under Investigation)	An individual who is a lab-confirmed case of COVID-19.
Exposed Contact	Identified by a PUI as someone with whom they have come into direct contact while they were symptomatic.
Self-Registered Contacts	Public individual who has self-registered for tracing through the public-facing symptom tracker web form.
Case Investigator	DSHS employee who will perform clinical outreach, hotel facility placement requests, and phone-based home monitoring of COVID-19 positive individuals. Medically-trained individuals.
Contact Tracer Call Center Representatives	DSHS employee who will follow-up with Exposed Contacts and Self-Registered contacts; service desk function.
COVID-19 Clinician/Medical Oversight	DSHS medical professional who will provide clinical assessment on a COVID-19 positive outreach.
Test Center Site Manager	DSHS employee who will provide testing center availability details and conduct physical assessment around medical needs of individuals who come in for testing. Should be able to determine whether an individual needs to self-isolate.



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COVID-19 Call Center Representative	DSHS employee who will receive transfer from Case Investigator to triage and assess COVID-19 positive individuals for appropriate level of medical attention.
Medical Provider	Medical facilities and professionals who will perform triage and assessment of medical attention required on Exposed Contacts and Self-Registered Contacts when those individuals ask for help via SMS.

### Communication Center - Call Center Case Management

Enterprise call center case management capabilities are required to drive and scale successful Texas DSHS COVID-19 Contact Tracing initiative. MTX brings experience and domain knowledge expertise in COVID-19 contact tracing across 17 state agencies and cities with a set of accelerator components to drive aggressive timeline. DSHS to have tremendous flexibility in redefining the use cases defined below prior to Go Live and stability period after Go Live to bridge business process gaps to ensure adequate solutions and save lives. Given the considerable call center representatives with unknown skills - MTX recommends it's User Experience practice lead to drive the persona based discussions and configuration recommendation for adoption and ease of use.

Features	Description	Assumptions
Case Management	Manage interactions, touchpoints and cases across all call center related activities for PUIs and Exposed Contacts.	Configuration of standard Salesforce case management capabilities.
Omni-channel	Manage different sources of inbound cases or inquiries to feed call center representatives appropriate queue list of interactions or cases to prioritize and work. Omni-channel allows routing work from multiple sources including web forms, email, IVR optionally including NLP Processing, SMS, and Chatbots. These channels enable the ability to route and prioritize items by source, agent skill, priority, demographic information, and types of interactions.	Configuration of standard Salesforce case omni-channel capabilities. Flexibility in criterias for the number of skills or categories to prioritize omni-channel case distribution.
Case Queue Management	Manage case worklist queue as they flow through the business processes that drives workflow activities and escalation processes.	Configuration of standard Salesforce case management capabilities. Flexibility in using a queue at a group or individual case assignment.
Call Center with Telephony System	Enable a virtual call center that provides flexible capability for Texas DSHS to manage a gradual ramp up of call center representatives to conduct	Configuration of standard Salesforce Computer Telephony Integration (CTI)



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	contact tracing and COVID-19 related inbound or out-reach activities.	capabilities to configure and connect with 3rd party telephony/IVR systems.
Call Center Scripts	Manage and publish scripts in a simple manner that any call center representatives can ramp up fast with minimal training to conduct contact tracing.	Flexibility for Texas DSHS in script definition, revision and configuration as it learns and adjusts to the evolving contact tracing needs. English and Spanish scripts are part of this scope.
Web to Case	Enable Texas residents and visitors to contact or inquire via web form that generates cases and follow a defined set of workflow processes to meet business needs.	Configuration of standard Salesforce web to case feature. Flexibility in branding the web component to meet Texas DSHS design guidelines.
Email to Case	Manage inbound emails as cases and follow a defined set of workflow processes to meet business needs.	Configuration of standard Salesforce email to case feature.
SMS to Case	Enable SMS to case for specific SMS messages that meet DSHS's escalation criteria and require review and/or response by Call Center Representative or other personas. SMS cases will be routed to a queue.	Configuration of standard Salesforce and SMS to case features.
Case Comments	Manage case comments for internal purpose to ensure notes are captured to drive transparency and accountability.	Configuration of standard Salesforce case comments.
Workflow and Notifications	Manage set of templates, workflow rules, and notification alerts to drive business processes. Ability to send automated or manual emails or alerts to parties involved within cases. Any emails generated within cases to enable responses by contacts as part of case history	Configuration of standard Salesforce email templates, workflow rules, and alerts capabilities.
User Experience	Enable simple, clean and persona based User Experience (UX) across all facets of the call center and contact tracing features. Any external facing branded portal will enable intuitive UX and interface.	Configuration of standard Salesforce Lightning Web Component (LWC) to enable simple User Experience for all users. MTX's UX Lead will be responsible for the success of this initiative. The expectation is that 87% to 95% of the features will be in standard Salesforce LWC components.



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Operational Reports and Dashboard	Manage day to day operational reports and dashboard that enables call center representatives, supervisors, DSHS employees, and DSHS leadership for insights to make decisions and manage workflow.	Configuration of standard Salesforce reports and dashboard. Flexibility in the number of reports and dashboards needed for DSHS.
Business Intelligence - Analytics Dashboard	Manage complex dashboard business intelligence requirements with combined data sets amongst multiple categories that enable actionable insights.	Configuration of standard Salesforce Einstein Analytics dashboard. Flexibility in the number of analytics dashboard needed for DSHS.
Data Quality and De-duplication	Manage set of data duplicate and matching rules to drive data quality for greater contact tracing, 360 view for a person or household members	Configuration of standard Salesforce duplicate and matching rules. Flexibility in defining a set of additional rules using custom components.
Knowledge Chat Bot	Ability to address inquiries with automated responses based on a set of tree-view content structure.	Configuration of MTX accelerator product with flexibility to modify.
Cloud IVR	Configure cloud based IVR and associated features to operationalize a large scale virtual call center.	Configuration of standard Salesforce and Cloud IVR features.

### COVID-19 Contact Tracing

MTX will provide its solution for contact tracing, which is the process of identification of persons who may have come into contact with an infected person ("contacts") and subsequent collection of further information about these contacts.

Contact Tracing
PUI records will be created in Salesforce for Case Investigators to conduct outreach.
Allow Case Investigators to collect details about PUI self-monitoring ability and details about their Exposed Contacts as part of PUI outreach.
Case Investigator can collect details about the PUI's relationship with the Exposed Contact: <ol style="list-style-type: none"> <li>1. Household Member</li> <li>2. Family (does not live in household)</li> <li>3. Friend (does not live in household)</li> <li>4. Neighbor</li> <li>5. Other</li> </ol>



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When a PUI provides Exposed Contacts' information, flag the Exposed Contact.
Establish a relationship between PUI and Exposed Contact.
Request consent and notification preferences of Exposed Contact.
Show list of Exposed Contacts in the PUI's individual record.
Show PUI in the Exposed Contact's individual record.
An Exposed Contact can have more than one PUI associated to them and vice versa.
PUI cannot consent on behalf of an adult Exposed Contact unless they are their caretaker or guardian.
Case Investigator and Call Center Representatives should have access to PUI and Exposed Contact data in order to conduct appropriate investigation, monitoring, and tracing.
If more details are required of Exposed Contact, call or send SMS request for more information after consent is provided.
Administrators can pull: <ol style="list-style-type: none"> <li>1. A list of only Exposed Contacts</li> <li>2. A list of Contacts at Risk</li> <li>3. A list of a PUIs and their Exposed Contacts</li> </ol>

Features	Description	Assumptions
Online/Web-based Intake Form	<p>Public-facing web-based form to capture necessary contact information and required consent.</p> <p>A User can enter their own contact information and provide consent as well as contact information for their household members or contacts.</p> <p>The consent for household members and additional contacts will be fleshed out with the Texas per their data privacy regulations.</p> <p>Mobile-responsive design on the web-based application can be displayed across top 3 browsers (latest version) and is ADA</p>	<p>Configure MTX's Lightning Web Component and flexibility in extending the features to meet Texas Contact Tracing business needs.</p>



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	compatible.	
Analytics & Insights Dashboard	Secure access into real-time reporting and analytics to keep a pulse in real-time of aggregate self-reported data of consent, application engagement, and symptoms.	Configuration of standard Salesforce reports and dashboard. Flexibility in the number of reports and dashboards needed for Texas. Initial baseline is expected to be 50 to 100 reports and 10 to 15 dashboards.
Contact Tracing & Monitoring	Ability to relate an individual to their provided contacts. If SMS details are provided, the system will attempt to receive consent for tracking and communication purposes and solicit intake for additional information.	
Automatic SMS Text Conversation	<p>Automated two-way SMS/text messaging to:</p> <ul style="list-style-type: none"> <li>- Send surveys to users</li> <li>- Send links and informational messaging</li> <li>- Receive response from users</li> <li>- Allow users to opt-in or out of messaging</li> </ul> <p>Provides significant load deflection from call center and reduces agent resource requirements.</p>	<p>Configuration of MTX's COVID-19 Response platform within Salesforce. Flexibility in revising features to meet Texas business needs.</p> <p>Frequency and duration of messaging is configurable.</p>
Contact Import/Upload	Using a predefined CSV format provided, contact information can be uploaded quickly.	Configuration of standard Salesforce upload wizard feature to load data.
Data Export	Ability to extract a predefined set of contact information and associated fields that are currently in the system to CSV and Excel.	Configuration of standard Salesforce data export capabilities.
Data Quality and De-duplication	Manage set of data duplicate and matching rules to drive data quality for greater contact tracing, a 360 view for a person or household members.	Configuration of standard Salesforce duplicate and matching rules. Flexibility in defining a set of additional rules using custom components.





Workflow and Notifications	Manage set of templates, workflow rules, and notification alerts to drive business processes. Ability to send automated or manual emails or alerts to parties involved within contact tracing cases and interactions. Any emails generated within cases to enable responses by contacts as part of case history	Configuration of standard Salesforce email templates, workflow rules, and alerts capabilities.
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### Antibody & COVID-19 Testing - Registration & Scheduling

The solution will identify individuals to prioritize for antibody testing. This list of individuals will be uploaded into the system. After the upload an individual will receive a link to verify and create a profile and select an appointment time for testing. They will also be issued a unique code (QR code) to link their information with test results. It is expected the test facility will submit files to the DSHS and other health teams for importing of results.

### Additional Persona Definition:

#### Citizen User:

- Individuals will receive communication they are eligible for antibody testing
- Ability to schedule day and time of testing
- Receive a QR code to leverage at check in

#### Test Community User:

- Scan the QR code once testing has been completed

#### TexasAdmin User:

- Import list of desired antibody testing candidates
- Import test results (if not updated by the lab user)

#### Lab Community User:

- Can update the results of the tests via the Lab Portal
- Option to send file with patient results to a central state health team for loading

Features	Description	Assumptions
Antibody Test Registration	DSHS also has the ability to upload a list of citizens eligible for testing and notify the citizens that they are eligible for antibody testing or COVID-19 testing. Individuals will be provided a unique link to a self-service community portal where they can authenticate	Configuration of MTX Antibody & COVID-19 Testing accelerator with flexibility to revise the features to meet DSHS business needs.





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	and verify their identity.	
Appointment Scheduling	Citizens will access the web scheduler via an online community and have the ability to schedule for a test by location. Schedulers will also have the ability to access the web scheduler by test location, and select a date and time for the individuals appointment.	Configuration of MTX Antibody & COVID-19 Testing accelerator with flexibility to revise the features to meet DSHS business needs.
Test Center Screening Capacity	A central administrator can set up the daily testing capacity for the Test Sites including tests available per 30 minutes, and testing start and end times which will create the testing calendar for scheduling agents to assign qualifying individuals appointments.	Configuration of MTX Antibody & COVID-19 Testing accelerator with flexibility to revise the features to meet Texas business needs.
Verification / Notification of Appointments	System will generate and distribute confirmation of scheduled appointments with date, time, and location of test including mapping information.	Configuration of MTX Antibody & COVID-19 Testing accelerator with flexibility to revise the features to meet DSHS business needs.
Appointment Management	Appointments will create a case for tracking by an internal call center with a configured workflow for full life-cycle management from scheduling to completion of tests. All documents and communications will be tracked within the case.	Configuration of MTX Antibody & COVID-19 Testing accelerator with flexibility to revise the features to meet DSHS business needs.
Printable Visit/Test Roster	The appointment document will include a QR code generated by the system for ease of check-in via mobile app. QR code checkin will automatically update the individual record.	Configuration of MTX Antibody & COVID-19 Testing accelerator with flexibility to revise the features to meet DSHS business needs. Configuration of standard Salesforce native mobile app for the QR Code.
Upload/import of Individuals that have not been Scheduled	Deliver the ability to mass import/ upload into Salesforce of individuals that have not been scheduled for testing.	Configuration of MTX Antibody & COVID-19 Testing accelerator with flexibility to revise the



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		features to meet DSHS business needs.
Mapping of Testing Centers	Configuration and utilization of Salesforce Maps to map Testing Centers for on-demand mapping and reference.	Configuration of MTX Antibody & COVID-19 Testing accelerator with flexibility to revise the features to meet DSHS business needs.
Workflow and Notifications	Manage set of templates, workflow rules, and notification alerts to drive business processes. Ability to send automated or manual emails or alerts to parties involved within cases. Any emails generated within cases to enable responses by contacts as part of case history.	Configuration of standard Salesforce email templates, workflow rules, and alerts capabilities.
User Experience	Enable simple, clean and persona based User Experience (UX) across all facets of the Testing - Registration & Scheduling. Any external facing branded portal will enable intuitive UX and interface.	Configuration of standard Salesforce Lightning Web Component (LWC) to enable simple User Experience for all users. MTX's UX Lead will be responsible for the success of this initiative.
Data Quality and De-duplication	Manage set of data duplicate and matching rules to drive data quality for greater contact tracing, a 360 view for a person or household members.	Configuration of standard Salesforce duplicate and matching rules. Flexibility in defining a set of additional rules using custom components.
Analytics & Insights Dashboard	Secure access into real-time reporting and analytics to keep a pulse in Antibody & COVID-19 Testing - Registration and Scheduling.	Configuration of standard Salesforce reports and dashboard. Flexibility in the number of reports and dashboards needed for DSHS. Initial baseline is expected to be 10 to 25 reports and 5 to 10 dashboards.
Antibody Test	Ability for an individual contact to receive a	Custom development of



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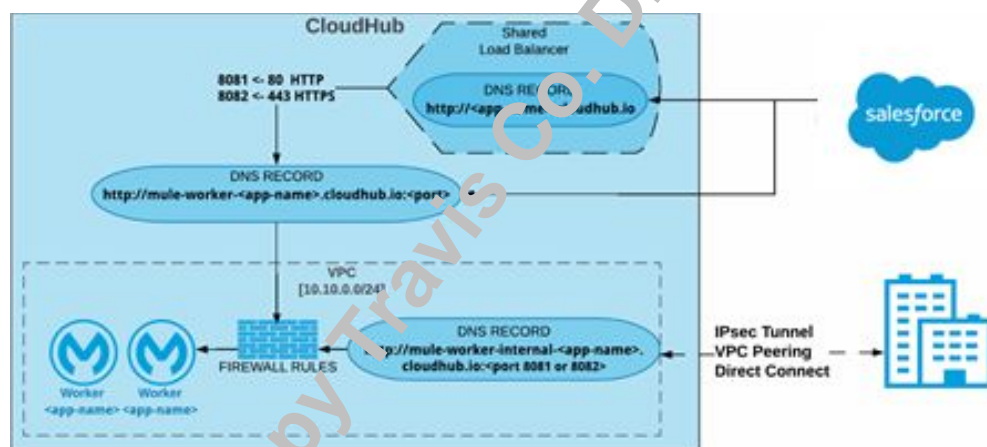
Certificate	certificate of completion of the Antibody text.	the certificate using a template document.
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### Integration Between Salesforce and Texas DSHS Systems

Bidirectional Data Flow Between Salesforce and Texas DSHS Systems will be facilitated by the following MuleSoft Configuration (when needed):

- Anypoint Platform Base, Production vCore, Pre-Production vCore
- API Manager and Analytics
- HL7 Connectors for Prod & Pre-prod
- Cloud messaging and queuing using Anypoint MQ
- Transformation working area using Object Store

Recommended Architecture:



Feature	Description	Assumptions
Environment Setup	Configuration MuleSoft environment to support on-prem and cloud communication. Incorporation of common assets such as error-handling and retry-mechanism.	Configuration of the VPN/VPC to enable on-prem and cloud communication, as necessary.



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Requirements Gathering	Each identified integration will be accompanied with a Functional Integration Document which states the overall integration requirements.	Creation of the Functional Integration Documents which will be reviewed with the relevant stakeholders
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Integration Development	Development and configuration of MuleSoft integrations, utilizing best practices recommended by MuleSoft.	<p>Development of up to 7 unidirectional integration use cases for a specific object (cfr: Case, Contact etc) between applications implemented on the MuleSoft middleware platform. The integration use cases will be determined by TX DSHS and there's no limitation on the number of applications that are integrated.</p> <p>Integrations that support master data objects will be developed in a manner that will support a potential one-time migration effort via integration, as needed. For example: To support an initial load of contacts / cases from Maven into Salesforce.</p> <p>All data migration efforts will require Texas staff to scrub, cleanse, and prepare Texas data prior to migration via integration.</p> <p>Data migration will be conducted via integration only and after integration development is completed.</p>
Unit Test	Basic end-to-end tests will be conducted for each developed integration to validate that	End-to-end testing will be performed in collaboration



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	documented integration requirement needs are fulfilled.	with the application owners.
Load Testing	Load testing will be conducted within an environment that mirrors the production environment to validate performance KPIs that represent the business needs.	Load testing will be performed in collaboration with application owners of integrated systems. KPIs will be defined by the appropriate stakeholders and documented in the Functional Integration Document

### SMS/Text Message Services

Feature	Description	Assumptions
Automated SMS/Text Message	Send text messages to individuals with the ability to send the text message manually as well as automatically based on defined/configured send time.  Provides significant load deflection from call center and reduces agent resource requirements.	Configuration of standard predefined messages within Salesforce interface.
Configured Send Times	Pre-schedule at which time of day the SMS/text messages will be triggered/sent to the individual.	Configuration of standard predefined messages within Salesforce interface.
Intelligent Text Response Flow	Reply to the Contact with an SMS/text message based on the Contact's response to the initial text messages (Yes or No)	Configuration of standard predefined activities within Salesforce interface.
Capture Contact Responses on Contact Record	Save the Contact's SMS/text response on the Contact's record for call center representatives to view	Capturing responses in Salesforce will be custom development. MTX Accelerator already enables flexible models to revise.
Bulk & Individual Send	Ability to send SMS/text messages to a bulk list of Contacts as well as a single Contact	Configuration of standard predefined messages



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		within Salesforce interface.
Send links within SMS/text message	Include managed web links in the text message as predefined.	Configuration of standard predefined messages within Salesforce interface.

#### Marketing Cloud - Mass Email Communication

Baseline Feature	Description	Assumptions
Email Templates Generation	Manage set of email templates including HTML content to enable branding for Texas DSHS	Configuration of standard Salesforce marketing cloud. Initial baseline is expected to be 5 to 10 email templates.
Email Campaigns	Manage email campaigns based on the seasons or events that enable in reaching audiences of hundreds of thousands.	Configuration of standard Salesforce marketing cloud.
Manage Campaign Contacts	Ability to manage a list of contacts within the marketing cloud or pull in contacts from the contact list by managing reports.	Configuration of standard Salesforce marketing cloud.
Authentication	Manage authentication to ensure email messages are not getting flagged as spam.	DSHS and MTX to collaborate to configure.

#### Security and Permissions

Features	Description	Assumptions
Salesforce Shield	Event monitoring, field audit trail and platform encryption.	Compliance with both PII and HIPAA rules for storing sensitive, confidential, or proprietary data. MTX to ensure the configuration for privacy and confidentiality of that data.
Security & Permissions	Security plan to encompass Internal Users, External Users, and public data access.  Internal Security users will be supported using Salesforce Profiles and Permission sets with Sharing rules to control record access.	Configuration of standard Salesforce profiles and permission.  MTX will build record level access per business requirements leveraging



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	External data access will be provided through Salesforce lightning communities.	sharing rules, without apex sharing.  MTX will provide 1 profile and sharing set per community to provide access to externally authenticated users.
User Administration	Provision access to Salesforce environments for DSHS personas.	

#### Change Enablement

Baseline Feature	Description	Assumptions
Organization Readiness & Training Plan	Organization readiness assessment and detailed Training Plan including timeline, milestones, action items and responsibilities.	MTX will conduct an organization readiness assessment to determine readiness of stakeholders to successfully adopt, own, and sustain the upcoming implementation and build a Training Plan with the results.
Communication Strategy	Advise on internal and external communication templates to be used by Texas DSHS along with proper approval protocol.	Partnership with Texas DSHS and it's communication team to define cadence in the approval process.
Training Webinar	One hour live webinars to train individuals how to use the system.	Focus of each webinar will be detailed in the Training Plan.  MTX will deliver two webinars per module for a total of 14 webinars. Client





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		<p>will coordinate all logistics of the workshop; identify participants; coordinate schedules.</p> <p>Webinar will be delivered live and recorded.</p>
Instructional Design	MTX to create Facilitator's Guides, Slide Decks for 6 courses and a maximum of 10 Quick Reference Guides	<p>MTX will produce instructional design.</p> <p>Client to provide resources for process knowledge and resources for review of content in timely manner</p>
Training Videos	Maximum of 10 Demo Videos	<p>MTX will produce modules.</p> <p>Client to provide resources for process knowledge and provide resources for review of content.</p>
Train the Trainer	Maximum of 16 Hours of Train the Trainer	<p>MTX to conduct Train-the-Trainer sessions.</p> <p>Client will identify trainers/super users for various solutions, coordinate all logistics of the session(s) and deliver end-user training, if agreed upon.</p>
Integration Training for Mulesoft	MTX will provide up to 5 sessions in total. Each session will be 2 hours and will include DoITT integration SMEs to participate in the builds & testing	Client will identify key integration SMEs for knowledge transfer and training. Client will also coordinate all logistics of the session(s).
Weekly Architecture	Flag a certain design approach for the weekly	Ongoing technical



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Checkpoint	architecture checkpoint so that the architecture team are aware of requests and make informed decisions.	exposure and knowledge transfer for the DSHScore technical staff within the project.
Cognitive Learning Style	Prepare an assessment of learning modalities and identify trainees in one of the three categories: Visual, Kinesthetic, and Auditory. This enables the training team to tailor content personalized by categories.	Configuration of MTX assessment tool and conduct survey. Assessment 7, 30, 60, 90, 180 days.

#### Optional Items

These items are not included in this milestone pricing; however, this item can be included in the deliverable based on the pricing estimate below.

Baseline Feature	Description	Assumptions
Google/Apple API - Proximity-Based Contact Tracing	Proximity-based exposure data from Google and Apple Exposure Notification partnership, including: <ul style="list-style-type: none"> <li>- public-facing iOS and Android mobile apps</li> <li>- BigQuery data aggregation and visualization</li> <li>- integration to Salesforce</li> </ul>	MTX has access to the API via Google partnership; however, we need to clarify the future needs with specific use cases.  Approximate cost of this module range: \$275K to \$425K



## Appendix B - Pricing Breakdowns

### MTX & Call Center Platform

The costs below represent the one-time implementation costs associated with call center and contact tracing program platform.

Functional Area	One-Time Costs
Implementation & Platform Support Costs	
Communication Center - Call Center/Case Management	\$250,000
Contact Tracing Platform	\$350,000
Disease Monitoring & Control Application	\$100,000
Schedule & Test Center Management	\$150,000
Learning Management System	\$350,000
SMS Text Messaging (supports Disease Monitoring Control)	\$100,000
Marketing Cloud	\$58,900
SFDC Shield and Security & Permissions	\$150,000
Integration and Data Migration	\$450,000
Change Enablement and Management	\$215,000
Support and Enhancement Subscription - 18 month (250 hours)	\$675,000
Total Implementation Cost	\$3,348,900

Note: If selected we can assist in pricing negotiations with Salesforce



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### Call Center Operations

Based on current details and understanding of DSHS needs and goals, MTX estimates the following costs for supplemental call center personnel.

MTX will provide appropriate program management and oversight for the Remote Contact Tracing Representatives (CTRs)

- Provide Program Management for the rollout of the MTX Group Remote Customer Service for contact screening support
- Provide up to 5000 CTRs and commensurate team leadership for workforce management and quality assurance of the MTX Group Contact Center Operations
- Staffing provided for call center from MTX also includes the following:
  - Initial training
  - Management Oversight
  - English and Spanish Language support
  - Hours of support 7AM – 7PM, Monday – Friday (local time zone)
  - Background checks required
  - T&M billing first 2 months or until more precise run rate can be established on monthly basis

Resource	Qty	Rate/Hour	Forecasted Work Hours/Month	Monthly Cost
Contact Tracer	400	\$34.50	173	\$2,387,400.00
Case Investigator	100	\$35.65	173	\$616,745.00
Supervisor/Team Lead	20	\$70.15	173	\$242,719.00
Epidemiologist Lead	5	\$70.15	173	\$60,679.75

Bill rates include PC hardware, headsets, service management, training and monthly metrics provided from the customer's tools.

\*Costs above are subject to change based on agent mix sourcing (MTX vs. Texas), total volume, and additional conversations with Texas and DSHS. MTX and DSHS to review resource roles and assumptions to ensure expectations are aligned.

MTX can source up to 1,000 call center agents per month.



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The proposed agent ramp is defined below and can be a combination of MTX sourced agents and Texas provided agents.

Month 1 = 1,000

Month 2 = 2,000

Month 3 = 3,000

Month 4 = 3,500

Month 5 = 4,000

Month 6 = 4,500

Month 7 - Month 24 = 4,500\*

\*MTX can source well beyond 5,000 agents if required. The model currently proposes 4,500 as MTX believes our call center and contact tracing platform can help reduce agent requirements.

These call center team members will work with the team members provided by the state of Texas. MTX will ensure all team members, regardless of source, are onboarded, trained, and supported.

The specific ramp schedule to be driven by performance and volumes and will be mutually agreed to by MTX and DSHS.

Independent of the call center resources (tracers, case investigators, supervisors, and epidemiologists) MTX will establish the following Call Center Leadership and Oversight Team immediately\* to lead and support the call center and consolidate team:

MTX Call Center Leadership & Oversight			
Resources & Services - Phase 1 Team	Qty	Salary & Expense (est)	Annual Cost (est)
Program Manager	1	\$200,000	\$200,000
Call Center Director	1	\$175,000	\$175,000
Call Center Managers	2	\$110,000	\$220,000
Help Desk & Tier2, Tier3 Support Team	4	\$100,000	\$400,000
Ongoing Onboarding Team	1	\$100,000	\$100,000
HR Leader	1	\$125,000	\$125,000
<b>Total Cost</b>			<b>\$1,220,000</b>



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\* The need to ramp up Managers and Support Team will depend on call center staffing ramp needs and the mix between state provided and MTX sourced agents.

The above resource quantities are based on MTX industry experience and assumptions based on information available. If call center volumes and performance dictate additional oversight team members, MTX and DSHS to evaluate.

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### Salesforce Licenses

Based on our limited discussions to date, we are assuming a similar solution and use case portfolio as New York City and their Contact Tracing program.

In their case, the following Salesforce products (licenses) are in the mix:

<b>Agents - Public Health Professionals and Contact Tracers</b>
Salesforce Service Cloud (i.e. call center, case management, CRM) Digital Engagement (i.e. live chat, bots) Salesforce Maps, Native Salesforce Reports supplemented by Einstein Analytics
<b>Authenticated Communities</b>
Customer Community - logins (patient test scheduling) Partner Community - members (test center personnel)
<b>Mass Email Communication</b>
Salesforce Marketing Cloud
<b>Integration</b>
Mulesoft Anypoint Platform
<b>Security</b>
Government Cloud, Shield, HIPAA Compliance, Encryption, Field Audit, Event Monitoring

Agent ramp, use case adoption, and volumes will absolutely impact pricing. With further discussion, we will work with DSHS and Salesforce to fine tune use cases and pricing specific to the DSHS Contact Tracing Program.

Using assumptions consistent with New York City use cases for their contact tracing program (adjusted to Texas volumes), a reasonable estimate on annual licensing costs for Texas is:

- \$2.2M (includes all of the licenses above; 1,000 agents)
- \$4.3M (includes all of the licenses above; 4,500 agents)

The estimates above do not reflect licenses Texas or DSHS may already own that can be or are already being used for this program. Existing licenses will certainly minimize some of the cost estimates above.



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### Twilio\IVR

MTX has evaluated multiple IVR and CTI vendors for contact tracing virtual call centers and ultimately recommends Twilio for cost and features.

Assumption	Details
Timeframe (duration)	24 months
Twilio Pricing Includes	Twilio Flex (each contact tracer will have a unique Twilio Flex license) Platform Fees - Enterprise Plan & Support Voice - Outbound & Inbound SMS - Outbound & Inbound Call Recording Storage Carrier Lookups ShortCodes
Agent Requirements	MTX believes that the number of call center agents required can be reduced by the MTX innovative call center technology solutions. MTX has assumed a high end of 4,500 agents instead of 5,000; with the goal to reduce even further.
Agent Ramp Schedule	Month 1 = 1,000 Month 2 = 2,000 Month 3 = 3,000 Month 4 = 3,500 Month 5 = 4,000 Month 6 = 4,500 Month 7 - Month 24 = 4,500
Communications Distribution	The contact tracing use case - generally - relies on mostly outbound communications (from Contact Tracers to Citizens). The Twilio team has assumed that this distribution (across Voice channels) is 80% outbound (from Contact Tracers to Citizens) and 20% inbound (from Citizens to Contact Tracers).
Monthly Voice Minutes	We have assumed 2,000 inbound minutes per Tracer per month and 8,000 outbound minutes per Tracer per month. We assume that communications volume scales linearly (1:1 ratio). While we know communications volume may plateau at some point, we want to make sure to account for "worst case scenario" as this may impact budgetary requirements upfront.
Text Message Volume & Distribution	Given the population of Texas we have assumed approximately 1 text message per citizen per month. The outbound / inbound distribution is 50% outbound (from Contact Tracers to Citizens) and 50% inbound (from Citizens to Contact Tracers). We assume a more equal distribution within this channel because SMS is an effective means of reducing inbound call volume and can be leveraged to build chatbot technology for self-service experiences.





As referenced above, Twilio costs are estimated based on usage assumptions specific to # of agents, agent ramp schedule, volume of calls, volume of texts,.etc.

Using the assumptions above, modifying the peak number of agents required, a reasonable range for Twilio costs is depicted below:

Range	# of Agents at peak (months 6-24)	Ramp (by month)	24 month cost
Floor	3000	1000,1500,2000,2000,2500,3000	\$7,518,360
Ceiling	4500	1000,2000,3000,3500,4000,4500	\$10,593,570


Twilio costs have been estimated and included in the Cost Proposal document assuming the Ceiling costs to be conservative.



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## Appendix C - Proposed MTX Team

Team Member	Experience	Responsibilities
<p>Das Nobel Program Oversight</p> 	<ul style="list-style-type: none"> <li>• Chief Executive Officer and Founder of MTX Group, Inc.</li> <li>• Over a decade of Salesforce experience including 6 years of Community Portal, 5 years of Licensing experience, and a wealth of knowledge on all facets of the Salesforce ecosystem.</li> <li>• Led MTX Group, Inc. from a Silver Level to a Gold-Level Partnership with Salesforce.com, MTX's infrastructure and software-as-a-Solution partner on which we build and implement FEDRamp-certified Government cloud-application solutions.</li> <li>• Currently executing and expanding a successful strategy to match high-value teams of experts with Public Sector clients to implement cloud-based application solutions that modernize and create a more efficient, accessible, and digitally-secure government.</li> </ul>	<ul style="list-style-type: none"> <li>• Holds himself accountable for the overall success of the project and your organizational goals as agreed on in the Statement of Work and project success criteria.</li> <li>• Das provides exceptional communication skills and the required high level of emotional intelligence to clear away murky political and team roadblocks.</li> <li>• He transforms change-resistance into clear-sighted motivation and alignment to achieve DSHS's ultimate project goals.</li> <li>• Additionally, he hosts the executive alignment workshop as well as other engagements that make sense for DSHS's specific project and organizational goals.</li> </ul>



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Team Member	Experience	Responsibilities
<p>Maera Siddiqi Program Oversight</p> 	<ul style="list-style-type: none"> <li>• Chief Strategy Officer of MTX Group, Inc.</li> <li>• Maera oversees the Disease Monitoring and Contact Tracing program around COVID-19 at MTX Group, providing advisory support to clients and aligning with internal strategy around the program.</li> <li>• Business executive with a background in advising strategic software-based transformation efforts for Fortune 100 companies, global nonprofits, and public sector agencies.</li> <li>• 10 years of experience leading large scale, enterprise-level programs involving emerging cloud technologies including Salesforce.com, mobile, web, Apple, and Google platforms.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide guidance on DSHS's contact tracing processes and oversee program-level progress in support of key goals.</li> <li>• Oversee program and account strategy around contact tracing roadmap.</li> <li>• Provide program governance ensuring project team is aligned to Texas DSHS vision.</li> </ul>



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Team Member	Experience	Responsibilities
<p>Dagmar Sousa Sr Project Manager</p> 	<ul style="list-style-type: none"> <li>• MBA in Project Management</li> <li>• Agile project management oversight for 20+ years</li> <li>• Marquee projects include the DOHMH, Massachusetts General Insurance Commission, NYC City Administrative Services, NYC DCAS, NYC Sanitation and the NYS Department of Health</li> <li>• Goal-oriented team leader and dedicated team player with proven success managing multiple simultaneous projects.</li> </ul>	<ul style="list-style-type: none"> <li>• Interacting with the SMEs and stakeholders to get a better understanding of client business processes and gather business requirements.</li> <li>• Main source of communication between DSHS and the MTX project team.</li> <li>• Regular status reports to Account Manager and Executive Sponsors.</li> <li>• Milestones, finances, billing, and issue management.</li> <li>• Coordinates with the Project Manager for any Scope Changes or SOW-related issues.</li> </ul>



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Team Member	Experience	Responsibilities
<p>Jakub Novak Business Architect</p> 	<ul style="list-style-type: none"> <li>• Strategic consultant and Salesforce.com architect, with over 10 years of experience leading transformations within the public sector and enterprises including Fortune 100 companies, through complex, large-scale Salesforce implementations.</li> <li>• Trusted advisor and analytical thinker who effectively establishes relationships, credibility and trust with business and technical stakeholders.</li> <li>• Experienced leader with a proven track record in concurrently managing cross-functional and global resources, time constraints and competing priorities in high-pressure situations.</li> <li>• Holds 4 Salesforce certifications.</li> </ul>	<ul style="list-style-type: none"> <li>• Design Salesforce.com functional and solution architecture to achieve optimal functionality, usability, and performance in support of client strategic and operational goals.</li> <li>• Lead solution delivery in collaboration with the technical teams ensuring adherence to leading practices and timely implementation.</li> <li>• Closely collaborate and communicate with key DSHS stakeholders to ensure satisfaction and success.</li> <li>• Provide mentoring and guidance to other team members during implementation.</li> </ul>



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Team Member	Experience	Responsibilities
<p>George Acker Technical Architect</p> 	<ul style="list-style-type: none"> <li>• Responsible for system architecture, utilizing depth and breadth of multiple technology stacks.</li> <li>• Over 10 years of Salesforce experience while delivering result-oriented solutions for customers.</li> <li>• Certified Salesforce Admin, Platform Developer 1, Platform Developer 2.</li> <li>• Utilized Technology: Lightning, Force.com, Apex, VisualForce, Bootstrap, Heroku, Amazon, Ruby, Rackspace and SOQL.</li> </ul>	<ul style="list-style-type: none"> <li>• Translate strategy and business needs into a high-performance technical solution, including common data architecture, integration with external solutions, presentation layer, workflow, and other solution aspects.</li> <li>• Closely collaborate and communicate with key DSHS stakeholders to ensure satisfaction and success.</li> <li>• Provide mentoring and guidance to other team members during implementation.</li> <li>• Support prototyping activities to validate business requirements and solution definition.</li> </ul>



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Team Member	Experience	Responsibilities
<p>Nick Whitney Technical Architect</p> 	<ul style="list-style-type: none"> <li>• Chief Information Officer of MTX Group, Inc.</li> <li>• Over 10 years of experience leading business transformations within enterprises, through complex, large-scale Salesforce implementations.</li> <li>• Certified Application Architect, Certified System Architect, Integration Architecture Designer, Identity and Access Management Designer, Certified CPQ Specialist, Certified Sharing and Visibility Designer, Data Architecture &amp; Management Designer, Certified Development Lifecycle &amp; Development Designer.</li> </ul>	<ul style="list-style-type: none"> <li>• Translate strategy and business needs into a high-performance technical solution, including common data architecture, integration with external solutions, presentation layer, workflow, and other solution aspects.</li> <li>• Closely collaborate and communicate with key DSHS stakeholders to ensure satisfaction and success.</li> <li>• Provide mentoring and guidance to other team members during implementation.</li> <li>• Support prototyping activities to validate business requirements and solution definition.</li> </ul>



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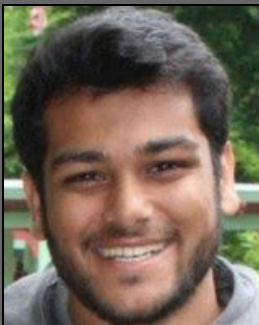
Team Member	Experience	Responsibilities
<p>Katy Price Technical Lead</p> 	<ul style="list-style-type: none"> <li>• Extensive product and project management experience combined with strong technical knowledge and hands-on roles developing, and running programs, projects, and accounts.</li> <li>• Proven history of growing strong technical teams and architecting diverse multi-platform solutions.</li> <li>• Experience managing and working in development and quality assurance all the way through to marketing, sales, and support.</li> </ul>	<ul style="list-style-type: none"> <li>• Provided technical guidance and coaching to developers, and conducted code review.</li> <li>• Review story requirements and assign development tasks in accordance to the Salesforce best practices.</li> <li>• Conduct POC for architecture validation.</li> <li>• Serve as SME and technical liaison between IT developers and business partners.</li> </ul>





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Team Member	Experience	Responsibilities
<p>Mayank Patel Business Analyst</p> 	<ul style="list-style-type: none"> <li>• Worked on multiple Salesforce projects. Worked very closely with end-users to gain feedback on the application.</li> <li>• Implemented business client training on new systems</li> <li>• Workflow Analysis ● Business Process Mapping</li> <li>• Strategic Planning ● Test Case Scenarios</li> <li>• Business Planning ● Data Mapping</li> </ul>	<ul style="list-style-type: none"> <li>• Work effectively with cross-functional design teams to create software solutions that elevated client-side experience and significantly improved overall functionality and performance.</li> <li>• Conduct discovery sessions with key CHS business users to collect information on business processes and user requirements</li> <li>• Collaborate on all stages of systems development lifecycle, from requirements gathering to production releases</li> <li>• Implement user acceptance testing with focus on documenting defects, identifying bottlenecks and executing test cases</li> </ul>



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Team Member	Experience	Responsibilities
<p>Koert Zegals Integration Architect</p> 	<ul style="list-style-type: none"> <li>• Highly proficient interpersonal, multilingual, and communication skills, capable of resolving multiple and complex challenges while motivating teams to peak performance.</li> <li>• MCD - Integration and API Consultant               <ul style="list-style-type: none"> <li>● Salesforce Certified Integration</li> </ul> </li> <li>• MCPA - Mulesoft Platform Architect               <ul style="list-style-type: none"> <li>● Salesforce Certified Platform Developer</li> </ul> </li> <li>• Salesforce Super badge Integration Specialist</li> </ul>	<ul style="list-style-type: none"> <li>• Integration Architect on customer engagements working with project teams and customer IT teams to help clients successfully adopt Salesforce and integrate between Salesforce and cloud and/or on premise systems.</li> <li>• Accountable for the day to day operations of the integration team and software development/configuration/modifications of an integrated business solution.</li> </ul>



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Team Member	Experience	Responsibilities
<p>Tony Montemorano UX Lead</p> 	<ul style="list-style-type: none"> <li>Experienced in multiple aspects of front-end design and development including client and user requirements gathering, mockup design, prototype development, and implementation of user interface for devices of all shapes and sizes.</li> <li>Certified Salesforce Administrator, Force.com Developer, Salesforce Advanced Administrator, Salesforce Community Cloud Administrator, Salesforce Sales Cloud, Salesforce Service Cloud.</li> <li>Salesforce Lightning Components, VisualForce, CSS, Bootstrap, AngularJS, Custom design, and development for user interfaces using HTML, Sass, and JavaScript.</li> </ul>	<ul style="list-style-type: none"> <li>Play a vital role in strategic accounts to ensure that proper UX/UI life-cycle activities are followed to ensure the highest quality of services is delivered in a timely manner.</li> <li>Illustrating design ideas using storyboards, process flows and sitemaps.</li> <li>Design, prototype development, and implementation for a wide variety of high-end intranet sites built on and/or connected to Salesforce.</li> </ul>



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Team Member	Experience	Responsibilities
<p>Alex Phillips Call Center Technical Lead</p> 	<ul style="list-style-type: none"> <li>• With over 5 years of Salesforce experience, I am adept at delivering result-oriented solutions for customers.</li> <li>• Motivated and innovative professional with a strong work ethic and a dedication to reaching the highest levels of success; a passionate problem solver who excels in a professional and team environment; possesses an exceptional ability to develop and implement new ideas and creative solutions; goes beyond the call of duty to ensure client satisfaction.</li> </ul>	<ul style="list-style-type: none"> <li>• My design approach is to use declarative features as much as possible before leading toward custom solutions to ensure minimum maintenance effort.</li> <li>• All solutions are crafted with Salesforce best practices/governance limits in mind to ensure that solutions are scalable.</li> </ul>



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Team Member	Experience	Responsibilities
<p>Jim Haurylko Change Enablement</p> 	<ul style="list-style-type: none"> <li>• Visionary Leader in Global Training Program Management.</li> <li>• Past experience includes the Center for Creative Leadership and Executive Leadership Development Program</li> <li>• Sales, Software, Reseller &amp; CRM Training.</li> <li>• Experienced in creating multi-touch communication campaigns across a variety of mediums</li> <li>• Experienced in integrating people, process and technology changes into the overall change management plan</li> </ul>	<ul style="list-style-type: none"> <li>• Conducts pre deployment cognitive learning style and change readiness assessments for DSHS stakeholders</li> <li>• Co-create an overall change enablement strategy based on the response &amp; operational plan for Texas tailored to the needs of the DSHS stakeholders</li> <li>• Creates advocacy program design for Texas DSHS- peer network and leadership levels</li> <li>• Guides team in creating a brand and marketing communications plan to impacted audiences and key DSHS stakeholder communities</li> </ul>



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Team Member	Experience	Responsibilities
<p>Fahmida Chowdhury Managed Services Lead</p> 	<ul style="list-style-type: none"> <li>• Proven Managed Services and QA Lead with over 5 years of experience in the field of Cloud Transformation &amp; Quality Assurance with outstanding performance.</li> <li>• QA Best Practices.</li> <li>• Agile sprint QA planning.</li> <li>• Center of Excellence with Cloud Transformation.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide oversight and coordination to our technical and managed services team to run multiple parallel work streams for on-going and maintain &amp; support activities.</li> <li>• Sprint QA planning, write test case development, execution of test classes and prepare the end of sprint summary of issues and test case results.</li> <li>• Work closely with the development team to align our UAT strategy to ensure we deliver projects in time.</li> </ul>



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## Appendix D - Overview of Managed Support Services (Post Production Support)

### Support & Maintenance Overview of Services

#### Overview

The COVID-19 Response Solution Subscription is a 24-month subscription package that includes:

- Seasonal enhancements per application roadmap
- Maintenance and support for the entire subscription period
- Support ticketing system with login access for up to 5 Agency (i.e. DSHS) users

#### Application Seasonal Enhancements

MTX has a roadmap of enhancements that improve the usability of the COVID-19 Response Solutions. These minor enhancements are released once every season and customers can opt-in to receive these enhancements into their instance of the application as part of their subscription.

Your MTX Account Team will communicate and describe upcoming minor enhancements on the product roadmap, the release schedule for these enhancements, and how to opt-in each season to receive the enhancements to your application.

Enhancements include usability improvements, user interface improvements, bug fixes, general stability improvements, minor feature rollouts, among others.

#### Maintenance and Support

A team of MTX specialists will provide break/fix issue resolution support during the subscription period on a customized release timeline for the customer. These issues include cosmetic issues, field value updates, minor workflow updates, messaging logic and content updates, and system crashing issues.

This does not include creating new integrations or updates requiring architectural changes, which can be scoped separately as part of a separate project engagement.

The maintenance and support team will provide up to 250 hours of support on a monthly basis for the duration of the subscription period. Every issue will be resolved following a predictive agile methodology that includes Quality Assurance.

#### Support Ticketing System



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The customer will be given access to MTX Beans - the ticketing system in which the customer can log their support tickets. In Beans, the customer may log and prioritize their issues, communicate with the MTX Maintenance and Support team, and track status updates on their issue through a real-time Issue Status Dashboard.

MTX will create up to 5 user accounts to access the ticketing system and dashboard as well as provide live and recorded onboarding sessions for users that include best practices for issue logging, prioritization, tracking, and reporting.

### Service Levels

Response, updates, and resolution is based on severity level. The following SLA applies to response times and updates to them through resolution:

Severity Level	Definition	Initial Response Time <sup>1</sup>
Critical (1)	<ul style="list-style-type: none"> <li>Cloud Services or Application running on the Cloud Service are not accessible or seriously degraded, whereby a critical process failure prohibits the continuance of basic operations and there is no suitable workaround, or the Data is lost or destroyed, or there is a critical security flaw.</li> </ul>	<ul style="list-style-type: none"> <li>1 Hour</li> <li>Hourly Updates until closed</li> </ul>
High (2)	<ul style="list-style-type: none"> <li>Cloud Services or Application running on the Cloud Service encounter a critical process failure that does not prohibit continuance of basic operations and there is usually no suitable work-around.</li> </ul>	<ul style="list-style-type: none"> <li>4 Hours</li> <li>Daily Updates until closed</li> </ul>
Medium (3)	<ul style="list-style-type: none"> <li>Non-Critical part or component failure occurs when a Cloud Service or Application Module is not functioning, but the System is still usable for its intended purpose, or there is a reasonable workaround.</li> <li>The failure is not critical - no Data has been lost, and the Cloud Services have not failed. The issue has been identified and does not prevent normal operation of the Cloud Services. Workaround is cumbersome to use.</li> </ul>	<ul style="list-style-type: none"> <li>8 Hours</li> <li>Weekly updates until closed</li> </ul>





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Minor (4)	<ul style="list-style-type: none"> <li>Non-critical errors to the Cloud Services or Provider System. This is a minor disruption in the way tasks are performed but does not stop workflow and a workaround exists.</li> </ul>	<ul style="list-style-type: none"> <li>48 Hours</li> <li>Weekly updates until closed</li> </ul>
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- Response Time shall be calculated from the moment a Ticket is initiated until the moment a repair commences.
- Resolution Time shall be calculated as the time between the initiation of the Ticket by the DSHS according to the mutually agreed upon procedures and the time the Provider's service desk declares the actions to resolve the Defect in the Ticket completed as verified by DSHS.

#### Escalation Procedures:

- Provider will provide documented escalation and communication procedures for Critical Severity issues.
  - Escalation Path and Contacts (Support Managers, Technical Account Manager, Executive Staff)
  - Escalation Frequency
  - Communication Plan

#### Monitoring and Alerting:

- Provider will continuously monitor Cloud Services and generate alerts of outages, impacted components, and service degradation.
- Provide must provide access to service health and history dashboards and reports.

### Unsworn Declaration (TEX. CIV. PRAC. & REM. CODE § 132.001)

“My name is Nick Richards, I am over 18 years old, and my office is in McKinney, Texas. I declare under penalty of perjury that the following statements are true and correct.

1. I am a consultant with Aspen Technology, which I have represented in evaluating requests for proposals by government agencies over the last year and providing bids for such work.
2. Among the proposals I have been involved in was the contact tracing proposal process conducted by the Texas Department of State Health Services (“DSHS”), which sent out a request for proposal (“RFP”) for bidding around May 5, 2020.
3. The RFP provided funding for Governor Abbott’s Contact Tracing Program, Workforce and Call Center Program, which sought a vendor that would train, deploy, and manage thousands of contact tracers throughout Texas and create a call center for up to 5,000 agents.
4. The RFP was far less detailed than other specifications provided by other states during this time, with a very short span of time to respond. No substantive opportunity to ask questions or suggest alternatives that would have been vastly less expensive or more efficient was allowed.
5. The contract was eventually awarded and included the following language:

#### 3.1 EXCESS OBLIGATIONS PROHIBITED

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of

6. The RFP also required that a vendor:

Operate and staff a virtual call center from 8 am Central Standard Time to 8pm Central Standard Time 7 days a week. Hire and train management staff to onboard, train, and oversee up to 5000 paid case investigators and contact tracers. ... Hire and train supervisors with virtual call center experience to manage epidemiology, case investigator, and contact tracer staff. ... Hire and train case investigators and contact tracing to contact individuals with a lab confirmed positive COVID-19 diagnosis and their close contacts who were potentially exposed. ... Digitally enabled contact center platform for up to 5000 agents. Provision 1000 work from home agents by May 11, 2020 with a steadily expanding number of agents up to 5000 agents by June 15, 2020.

7. I am unaware of any requirement that the call center be certified or competent to handle sensitive HIPAA data. There was no consideration of the actual workflows of the call center employees. Our questions included: How many case workers per calling agent? Were the agents calling, texting, emailing, all three, or something different? Will agents record these calls, and are there compliance concerns around the retention of recordings? These details can change the costs by orders of magnitude.

8. We were given about two days to submit our proposals.
9. The combination of short runway to respond and having no forum for questions and answers meant that Aspen's bid had to guess regarding serious details. We developed three pricing models and used the one in the middle to be safe, but they ranged from \$250M to \$800M, a significant disparity based on a dearth of information from the DSHS.
10. To my knowledge, ten companies entered the process: ACCENTURE, AT&T, DIRECT INTERACTIONS, IBM, LIVEOPS, MAXIMUS, MTX, NTT, QUALTRICS, and VERITAS.
11. On May 13, 2020, about eight days after the RFP was sent, the State of Texas awarded a \$295,295,796 contract ("Contract") to MTX Group, Inc., a relatively unknown private information technology company based in New York. To my knowledge, MTX has no prior history of work for the State, and the loss to MTX was shocking, particularly when MTX beat out established tech giants like ACCENTURE, IBM, and AT&T.

Executed in Collin County, State of Texas on July 9, 2020,



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Nick Richards